

AGENDA
CITY COUNCIL
Tuesday, April 19, 2022
9:00 AM

The regular meeting of the City Council will be held on April 19, 2022 at 9:00 AM in the City Council Chambers
455 N. Main Street, Wichita, KS 67202.

OPENING OF REGULAR MEETING

Call to Order

Invocation and Pledge of Allegiance

Approve the minutes of the regular meeting on April 12, 2022.

Proclamations:

Arbor Day
Arkansas River Trash Clean Up Day
National Infertility Awareness Week

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda.

Rules of decorum as provided in this code will be observed.

1. Deidra Thompson - Issues with the Wichita Animal Shelter.
2. Michael McCorkle - Earth Day 2022 in the shadow of climate change.
3. Ken Thomas - Do working dogs need lights and a toilet.

4. Sybil Strum - Stop the violence, start the caring.
5. Bill Stout - Safety concerns at the Eisenhower National Airport.

II. CONSENT AGENDA ITEMS 1 THROUGH 13

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately (The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.

COUNCIL BUSINESS

III. BOARD OF BIDS AND CONTRACTS

1. Board of Bids and Contracts dated April 18, 2022.

RECOMMENDED ACTION: Receive and file report, approve the contracts and authorize the necessary signatures.

IV. PETITIONS FOR PUBLIC IMPROVEMENTS - NONE

V. UNFINISHED COUNCIL BUSINESS

1. Economic Development Guidelines Update.

RECOMMENDED ACTION: Approved the Airfield Hangar addition to the Economic Development Guidelines.

[Agenda Report No. V-1.docx](#)

[Economic Development Guidelines Updated 041222 final.pdf](#)

VI. NEW COUNCIL BUSINESS

1. Public Hearing and Request for Letter of Intent to Issue Industrial Revenue Bonds, Air Capital Flight Line, LLC. (District III)

RECOMMENDED ACTION: Close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.

[Agenda Report No. VI-1.docx](#)

[IRB Application_Air Capital Flight Line Bld 165N.doc](#)

[Resolution 22-116](#)

2. Public Hearings Considering an Amendment to the Delano and Stadium Redevelopment Plan and Approval of a Development Agreement with Wichita Riverfront LP and EPC Real Estate, Group, LLC. (Districts IV and VI)

RECOMMENDED ACTION: Close the public hearings, approve the Development Agreement with Wichita Riverfront LP and EPC Real Estate Group, LLC, adopt the amended project plan, adopt the ordinances and authorize the necessary signatures.

[Agenda Report No. VI-2.docx](#)

[Project Plan West Bank TIF Amendment Final.pdf](#)

[Ordinance 51-749](#)

[Ordinance 51-750](#)

[Phase One Development Agreement.pdf](#)

3. Tourism Business Improvement District - 2023 Scope of Services.

RECOMMENDED ACTION: Approve the Tourism Business Improvement District (TBID) 2023 Scope of Services and Budget.

[Agenda Report No. VI-3.docx](#)

[2023 TBID Scope of Services Budget.docx](#)

4. Ordinance Amendments to Section 3.49.020, Regarding Licensing of Emergency Wrecker Services.

RECOMMENDED ACTION: Place the ordinance on first reading and authorize all necessary signatures.

[Agenda Report No. VI-4.docx](#)

[Ordinance 51-745](#)

[Delineated Ordinance](#)

5. Wichita Employees' Retirement and Police and Fire Retirement Systems Actuarial Valuation Reports as of December 31, 2021.

RECOMMENDED ACTION: Receive and file the Wichita Employees' Retirement and Police and Fire Retirement Systems' Actuarial Valuation Reports as of December 31, 2021, and approve the 2023 employer retirement fund contribution rates.

[Agenda Report No. VI-5.doc](#)

[2021 P&F Actuarial Report.pdf](#)

[2021 WER Actuarial Report.pdf](#)

6. Funding for Kellogg and Eisenhower Airport Parkway Aesthetic Improvements. (District IV)

RECOMMENDED ACTION: Approve the budget, adopt the resolution and authorize the necessary signatures.

[Agenda Report No. VI-6.docx](#)

[Resolution 22-114](#)

7. 2022 Traffic Signalization.

RECOMMENDED ACTION: Approve the budget, adopt the resolution and authorize the necessary signatures.

[Agenda Report No. VI-7.docx](#)

[Resolution 22-115](#)

8. Loan Agreement for the Northwest Water Facility Project.

RECOMMENDED ACTION: Approve the SRF Loan Agreement, authorize the required insurance payment to be paid out of the Water Utility Fund operating budget, and authorize the necessary signatures.

[Agenda Report No. VI-8.docx](#)

[SRF Loan Agreement 2.pdf](#)

[BAM Commitment Letter ..pdf](#)

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

VII. NON-CONSENT PLANNING AGENDA

1. ZON2022-00011 - City Zone Change from TF-3 Two-Family Residential to B Multi-Family Residential for Construction of Two Duplexes on Property Generally Located on the West Side of North Grove Avenue and One-Half Mile North of East 13th Street, 1701 North Grove. (District I)

RECOMMENDED ACTION: adopt the findings of the MAPC and approve the requested zone change and Protective Overlay #392, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes). Alternatives: 1. Approve the request for B Multi-Family Residential Zoning and Protective Overlay #392 with the Duplex design guidelines as a requirement (requires 5 of 7 votes); or 2. Deny the zone change (requires 5 of 7 votes); or 3. Return the case to MAPC for additional consideration (requires 4 of 7 votes).

[Agenda Report No. VII-1.docx](#)

[ZON2022-00011 WCC Supporting Documents.docx](#)

[Excerpt Minutes of March 17, 2022 MAPC.docx](#)

[ZON2022-00011 MAPC Staff Report no attachments.docx](#)
[ZON2022-00011 Interoffice Memorandum.docx.pdf](#)
[Ordinance 51-746](#)

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. Toni Lewis, a Toni Lewis, is also seated with the City Council.

VIII. NON-CONSENT HOUSING AGENDA - NONE

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. NON-CONSENT AIRPORT AGENDA - NONE

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Approval of travel for Council Member Brandon Johnson and Council Member Bryan Frye to attend the Leadership Kansas Orientation, April 20-23, 2022, Lawrence, Kansas.

RECOMMENDED ACTION: Approve the travel.

XI. COUNCIL MEMBER APPOINTMENTS AND COMMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the appointments.

Adjournment

ATTACHMENT 1 - CONSENT AGENDA ITEMS 1 THROUGH 13

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Applications for Licenses for Cereal Malt Beverages:

- a. Applications for Licenses to Retail Cereal Malt Beverages.

RECOMMENDED ACTION: Approve licenses subject to staff review and approval.
[CMBs for April 19, 2022.docx](#)

2. **Preliminary Estimates:**

- a. NTBA Preliminary Estimates for Traffic Signal and Paving Improvements to serve 21st Street and Broadmoor, Rock Road.

RECOMMENDED ACTION: Receive and file.
[Traffic Signal Cover Sheet Template.doc](#)
[Traffic Signal NTBA PE.doc](#)

3. **Agreements/Contracts:**

- a. Intergovernmental Agreement for Improvements at the Intersection of Zoo Boulevard and Hoover Road. (District VI)

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.
[Agenda Report No. II-3a.doc](#)
[Agreement with Wichita for Hoover-Zoo Improvements PDF](#)

- b. Intergovernmental Agreement for Improvements to Pawnee Avenue from Webb Road to Greenwich Road. (District II)

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.
[Agenda Report No. II-3b.doc](#)
[Agreement with Wichita for Pawnee Improvements.PDF](#)

Uncategorized Items:

4. Visit Wichita Monthly Reports February 2022.

RECOMMENDED ACTION: Receive and file.
[Visit Wichita TGT Reporting 2.2022.pdf](#)

5. Amendment to the Real Estate Agreement for the Sale of City-owned Parcels in the 500 Block of McLean Boulevard between Vine Avenue and Fern Avenue. (District VI)

RECOMMENDED ACTION: Approve the Amendment to the Real Estate Purchase Agreement and authorize the necessary signatures.
[Agenda Report No. II-5.doc](#)

[Second Amendment.pdf](#)

6. Amendment to Housing Development Loan Program Funding Agreement with Hope Enterprise, Inc. (District I)

RECOMMENDED ACTION: Approve the contract amendment providing for additional HOME Investment Partnerships Program funding for the project and extension of the date for completion, and authorize the necessary signatures.

[Agenda Report No. II-6.doc](#)

[Hope Ent. First Amendment 2020 HDLP](#)

7. Modification of Leases for Outdoor Advertising Signs on City Property. (Districts III, IV and VI)

RECOMMENDED ACTION: Approve the lease agreements and authorize all necessary signatures.

[Agenda Report No. VI-7.docx](#)

[Leases 12000 Block W Kellogg.pdf](#)

[Leases 13000 Block W Kellogg.pdf](#)

[Lease 750 E Pawnee.pdf](#)

[Lease 138 N Washington.pdf](#)

8. Wichita Bicycle Master Plan Update.

RECOMMENDED ACTION: Approve the contracts and authorize the necessary signatures.

[Agenda Report No. II-8.docx](#)

[Form 1312 KDOT.pdf](#)

[TIP Page 116.pdf](#)

9. HOME American Rescue Plan Consultant.

RECOMMENDED ACTION: Approve the HOME American Rescue Plan (ARP) consultant recommendation with contract and authorize the necessary signatures.

[Agenda Report No. II-9.doc](#)

[FP220025 HOME ARPA Contract](#)

10. Contract for Operation and Management of Parking Garages, Lots, and Meters.

RECOMMENDED ACTION: Approve The Car Park contract and authorize the necessary signatures.

[Agenda Report No. II-10.docx](#)

[Car Park Contract.pdf](#)

11. Second Reading Ordinances:

Second Reading Ordinances. (First read April 12, 2022)

RECOMMENDED ACTION: Adopt the ordinances.

[List of Second Reading Ordinances 04-19-2022.docx](#)

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

12. ZON2022-00010 - City Zone Change from OW Office Warehouse to TF-3 Two-Family Residential to Build Duplexes on Property Located on the West Side of South Hydraulic and Within One-Quarter Mile North of East 55th Street South. (District III)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes).

[Agenda Report No. II-12.docx](#)

[Supporting Documents.docx](#)

[Excerpt Minutes of March 17, 2022 MAPC.docx](#)

[Interoffice Memo.docx](#)

[Ordinance 51-747](#)

13. ZON2022-00013-City Amendment to P.O. #230 Provision #1 to Allow Vehicle Sales and Service; Generally located 800 Feet West of South Hillside on the North Side of East 31st Street South, 2826 E. 31st Street South. (District III)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes).

[Agenda Report No. II-13.docx](#)

[Supporting Documents.doc](#)

[Excerpt Minutes of March 17, 2022 MAPC.docx](#)

[Interoffice Memo.docx](#)

[Ordinance 51-748](#)

II. CONSENT HOUSING AGENDA ITEMS - NONE

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. A Toni Lewis is also seated with the City Council.

II. CONSENT AIRPORT AGENDA ITEMS - NONE

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Economic Development Guidelines Update

INITIATED BY: Office of Economic Development

AGENDA: Unfinished Business

Recommendation: Approve the Airfield Hangar addition to the Economic Development Guidelines.

Background: On April 12, 2022, the City Council considered an item that would add new language to the City's Economic Development Guidelines (Guidelines) regarding the eligibility of Airfield Hangars. The draft version of the Guidelines attached to the agenda report did not match the version updated to Granicus.

The item is being presented a second time to provide matching documents and to clarify that the language being presented for Council action is only regarding the addition of Airfield Hangars for consideration under the Industrial Revenue Bond section.

The Greater Wichita Partnership has identified the provision of Maintenance, Repair and Overhaul (MRO) buildings as critical to the region's ability to attract aerospace businesses that also diversify our economy. Businesses that provide maintenance, painting or other services for existing aircraft find Wichita attractive for expansion, and they require buildings to move into immediately. Thus, incentivizing construction of such large and expensive buildings will help grow and diversify the Wichita economy. To accomplish this, an amendment to the Economic Development Guidelines is recommended.

Analysis: Updating the Industrial Revenue Bond section of the Guidelines (page 20) would define minimum requirements for speculative construction of an airfield hangar to be eligible for property tax abatements as follows:

Airfield Hangar: A large structure primarily used for maintenance, repair and overhaul (MRO) including storage, painting, service, retrofitting, rebuilding, research or inspection of aircraft or aircraft components.

- Minimum 50,000 square foot building (75,000 square foot preferred) with a minimum clear height of 45 feet (65,000-70,000 feet preferred to accommodate wide body programs). Requests for smaller hangars at Colonel James Jabara Airport will be considered.
- May not be developed for personal use.
- May be developed on a private runway, military runway or public runway.
- Property tax abatement is 95% for first five years and 50% for second five years if 50% or more is leased at the five-year mark.
- If on a publicly owned runway at Wichita Dwight D. Eisenhower National Airport or Colonel James Jabara Airport, the project would be eligible for certain incentives determined by the Wichita Airport Authority that would adhere to relevant Federal Aviation Administration (FAA) standards.

Construction must start within 120 days of City Council approval and be completed within 15 months, with some exceptions for FAA approvals and supply chain disruptions. The abatement is the same as the

speculative industrial program which is 95% for the first five years and 50% abatement for the second five years if the property is at least 50% leased.

Financial Considerations: According to the Guidelines, the developer will be charged a \$2,500 application fee and a \$2,500 annual IRB administrative service fee for as long as bonds are outstanding.

Legal Considerations: All incentive agreements are subject to review and approval as to form by the Law Department. The Law Department has approved the attached Resolution as to form.

Recommendations/Actions: It is recommended that City Council approved the Airfield Hangar addition to the Economic Development Guidelines.

Attachments: Economic Development Guidelines

City of Wichita

And

Sedgwick County

Economic Development Guidelines

Adopted October 2020
Updated December 14, 2021
Updated April 12, 2022





Sedgwick County/City of Wichita Economic Development Guidelines



Table of Contents

Overview 2

Downtown Development..... 4

Property Tax Abatement / Sales Tax Exemption 12

 Industrial Revenue Bonds 12

 Property Tax Abatement..... 16

 Abatement Percentage 17

 Speculative Industrial, Flex Facility, Office & Airfield Hangar Buildings 18

 Sales Tax Exemption 20

 1

 Economic Development Exemption..... 232

 Property Tax Abatement..... 256

 Abatement Percentage 267

Community Improvement District 3029

 Eligible Costs 323

Tax Increment Financing..... 378

 Eligible Costs 3940

Sales Tax and Revenue (STAR) Bond Financing..... 457

 Eligible Costs 486

Façade Improvement Program 513

 Eligible Improvements 524

 Façade Improvement Area..... 597

Maps 5951

 Redevelopment Area..... 5260



Sedgwick County/City of Wichita Economic Development Guidelines





Sedgwick County/City of Wichita Economic Development Guidelines



OVERVIEW

- A. Economic development incentives are necessary because of the inherent competition between localities for new businesses and jobs and therefore shall be used prudently on projects where incentives can make a difference to either remain or locate in Sedgwick County. The governing bodies of both the City and County have adopted these guidelines.
- B. These guidelines have been prepared with the recognition that certain provisions are applicable to only one and not both jurisdictions. The intent of these guidelines is to complement any incentive program that may be adopted by other municipalities within Sedgwick County or by the State of Kansas. The City may consider other public improvements.
- C. The following guidelines are intended to provide a framework for consideration of incentives, and may not be the only factors to consider regarding incentives. The guidelines are primarily quantitative considerations. Qualitative considerations should also factor into the decisions regarding the granting of incentives.
- D. The objective of offering economic development incentives to businesses and developers shall be to encourage business and community development by:
 - 1. Creating and retaining quality jobs;
 - 2. Broadening and diversifying the tax base;
 - 3. Encouraging capital investments;
 - 4. Increasing the region's global competitiveness;
 - 5. Promoting the growth and welfare of the City of Wichita and Sedgwick County.
 - 6. Reducing crime.
 - 7. Improving community reputation.
 - 8. Redevelopment of key neighborhoods.
 - 9. Encouraging regional cooperation.
 - 10. Education of the community about public benefits.
- E. Economic development incentives available from the City of Wichita and Sedgwick County may include (but are not limited to) property tax abatements, sales tax exemptions, Community Improvement Districts, Tax Increment Financing, Sales Tax and Revenue bond financing and Façade Improvement loans. The City Council or Board of County Commissioners may determine the amount, terms and conditions of incentives.



Sedgwick County/City of Wichita Economic Development Guidelines



- F. Each request for incentives will be evaluated on an individual basis. Changing economic conditions and availability of funds may cause the City of Wichita and Sedgwick County to modify, amend, or discontinue any economic development incentive program. Should an incentive program be discontinued, the City Council and Board of County Commissioners will honor any incentive committed to before the discontinuance of the program.
- G. Each incentive program has separate and varying fees. Fees can include, but are not limited to, application fees, deposit fees, administrative fees, third party consultant fees, outside legal counsel fees, costs of mailing and publishing, among others.
- H. Staff will meet with companies, or developers, preliminarily to discuss projects, eligibility, submission requirements and timing, but will not process applications for City Council action until all application and deposit fees have been collected and all requisite applications and supporting documents have been submitted. A date for submission to the governing body will be selected by staff based upon available dates and staff work levels.
- I. Any costs incurred by the company, or developer, prior to approval of an incentive(s) will not be reimbursable by any incentive funding.
- J. Minimum private to public capital investment ratio should be 2 to 1. For projects that involve multiple phases of private capital investment, but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development. The City Council may waive this limit for projects of a substantial nature, or projects that diversify the local economy.
- ~~K.~~ The City may conduct a background check on all entities and key individuals that seek incentives from the City in connection with economic development or redevelopment projects. Developer will be responsible for a \$250 City administrative fee and external vendor vetting fees related to the background check. Third-party fees will be determined by the number of individuals and their related operating entities.
- ~~K.~~
- L. Application and deposit fees for specific incentive tools are to defray the cost of internal staff, external consultants, analysis, public notices and mailings necessary to administer and process applications. The overall goal is to ensure that the administration and processing of incentive applications are revenue neutral to the City.
- M. Economic Incentives are considered at the discretion of the City Council or County Commission and are not by right. The City Council or County Commission can determine to cease the use of an incentive or incentive tools at any time.



DOWNTOWN DEVELOPMENT INCENTIVES

APPLICATION FEE

\$5,000 – Non-refundable

DEPOSIT

The City shall require a minimum \$10,000 deposit. The deposit shall be applied toward staff time, expenses for any mailing or publications as well as internal and or external legal counsel. This fee shall be replenished by the applicant if at any time the fund drops below \$5,000. The applicant shall replenish the fund to the \$10,000 level within 10 days of notice that it has dropped below \$5,000. For projects that are complex in nature, such as requesting multiple incentives, the City may require a \$20,000 deposit to ensure adequate resources. Failure to replenish the deposit may result in City staff ceasing the processing of a project.

Parties requesting Downtown Development Incentives are also responsible for paying the fee charged by the third-party financial analysis consultant for preparing a summary report of the applicant's financial statements. The third-party financial analysis consultant will be "on call" to evaluate financial statements as applications are received. The fee charged by the third-party financial analysis consultant will vary based on the complexity of the project with more complex projects requiring higher fees. In addition, parties requesting Downtown Development Incentives are responsible for paying the fee charged by the Center for Economic Development and Business Research (CEDBR) to run the Fiscal Impact Model for the project.

BACKGROUND AND PURPOSE

The Master Plan for Wichita, Project Downtown, was adopted by the City Council on December 14, 2010, as the official guide for the revitalization of downtown Wichita. Project Downtown recognizes that development in downtown often poses initial development costs that can be hard to address solely with mechanisms like special assessment districts; façade improvement financing; economic development incentives and industrial revenue bond benefits; community improvement district financing; or lead and asbestos abatement financing. Therefore, Project Downtown recommends that the City of Wichita help overcome such obstacles to private investment by establishing a Downtown Incentives Policy that provides for a range of incentives in the form of public investments in downtown development projects that are timed with and supportive of private investment if a facet of the development involves creation of public assets that have lasting public benefits and facilitate additional private investment, and if the proposed public investment is investment in public assets such as parking, streetscaping, parks or other facilities with public benefit beyond the individual project. The purpose of the Downtown Development Incentives Policy is to outline the criteria by which the City of Wichita will consider such additional incentives for downtown development projects. Downtown development projects are those projects located within the Project Downtown plan area.



Sedgwick County/City of Wichita Economic Development Guidelines



APPLICABLE INCENTIVES

The Downtown Development Incentives Policy applies to requests for the following general public sources of funding (hereinafter, "Downtown Development Incentives") to be used in a downtown development project that involves creation of, and investment in, public assets with a lasting public benefit and facilitation of additional private investment:

- Tax Increment Financing (TIF)
- Hotel Guest Tax
- STAR Bonds

The City's other established incentive programs will remain available for downtown development projects but will not be subject to the requirements of this policy. Additionally, public projects to improve City assets that are funded through the City's Capital Improvement Program or that are funded, at least partially, through Special Assessments will not be subject to the requirements of this policy, even if the project is partially funded through one or more of the incentives listed above.

PRELIMINARY REVIEW PROCESS

Prior to consideration by the City Council, parties intending to request Downtown Development Incentives must contact the Downtown Design And Innovation Center (DDIC) prior to submitting their request. The DDIC is a consultative undertaking between the Wichita Downtown Development Corporation and the City of Wichita responsible for assisting with the preparation of requests for Downtown Development Incentives. Parties requesting Downtown Development Incentives are required to participate in the preliminary review process established by the DDIC prior to submitting their request.

Once the developer has completed detailed design of the project, the project will be scheduled for design review by the DDIC. The developer will need to provide a site plan and perspective drawings in advance of the design review meeting. Developers and their design team will attend the design review meeting to present the project and answer questions from DDIC team. A dialogue regarding any design modifications needed for consistency with the design guidelines will occur, and the DDIC team will attempt to reach consensus regarding any design modifications with the developer.

A written report outlining design modifications needed for consistency with the design guidelines will be provided to the developer following the design review meeting. The developer will provide a revised site plan and perspective drawings to the DDIC for confirmation of the design modifications. If the design modifications are unacceptable to the developer, an appeal to the Assistant City Manager/ ~~for~~ Development Services ~~Director~~ may be filed. The Assistant City Manager will appoint a committee to hear and decide the appeal. In the event the developer and committee are unable to reach agreement on the modifications, the developer may withdraw the proposal.



SUBMITTAL REQUIREMENTS

After completing the preliminary review process requirements, parties requesting Downtown Development Incentives must submit the information listed below. The Assistant City Manager, or other City Staff designated by the Assistant City Manager, will determine if the information provided is sufficient to undertake the evaluation process. If the Assistant City Manager, or other City Staff designated by the Assistant City Manager, determines that additional information is needed in order to undertake the evaluation process, parties requesting Downtown Development Incentives must submit such additional information as may be required by the Assistant City Manager, or other City Staff designated by the Assistant City Manager.

Project Summary

1. Project amount and purpose
2. Description of the redevelopment project, including details of how the proposed project meets the “Threshold Criteria” and the “Public Benefit Criteria” described in the “Evaluation Process” section below
3. Description of the proposed public-private partnership, including details of how the project partnership meets the “Threshold Criteria” and the “Business Plan Criteria” described below
4. Description of the development team, including details of how the development team meets the “Threshold Criteria” and the “Developer Background” criteria described below

Design Plan

1. Site Plan
2. Perspective Drawings

Business Plan

1. Market Analysis, including written description of plan to meet projections
2. Pro Forma, including written description of plan to meet projections
3. CEDBR Fiscal Impact Model (the developer is responsible for CEDBR’s fee for this service)
4. Source of capital, including:
 - a. Evidence of developer equity
 - b. Evidence of lender commitment
5. Amount and purpose of public investment sought
6. Repayment plan, if the City ordinarily requires a repayment plan or contingent repayment plan in connection with the type of incentive at issue
7. Backup repayment plan, including guarantors, if a repayment plan is required

Developer Background

1. Projected or existing financial statements (three years):
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)
 - c. If desired, financial statements may be submitted separately to a designated third party for analysis and summary report to the City.
2. History/ownership/legal structure of the business, including:

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



- a. Certificate of Good Standing from the Secretary of State
- b. Tax Clearance Certificate from the Department of Revenue
3. Experience of the development team, including:
 - a. Experience with similar projects
 - b. Number of projects completed by the development team
 - c. Past project experience with the City of Wichita
 - d. References, especially from other municipalities that have worked with the development team
4. Banking references, including:
 - a. Credit history reports, including past credit defaults (not required if the third-party financial analysis option is selected)
 - b. Letters of good standing from previous lenders
5. Applicant Disclosure Questionnaire for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

Parties that do not want their financial statements disclosed publicly may submit their financial statements directly to a third-party financial analysis consultant selected by the City. The third party financial analysis consultant will keep the financial statements confidential and will provide a summary report of their analysis of the financial statements to the City of Wichita, which analysis will in all cases address whether the financial statements were audited, whether the statements were accompanied by an auditor's opinion that they fairly presented the financial condition of the submitting party or parties, and whether any of the statements contained an auditor's note concerning material or fundamental uncertainty or actual doubt as to the subject's ability to continue as a going concern.

EVALUATION PROCESS

In considering a request for Downtown Development Incentives for a downtown development project, criteria will be evaluated regarding the public benefit of the project, the business plan for the project, and the developer's background and qualifications. An evaluation matrix (attached) will be used to evaluate projects on each criteria category. The evaluation matrix will be completed by an evaluation team that will collectively determine a single project score through team consensus. The evaluation team will be appointed by the City Manager and will include a diverse membership with representatives from the following:

- Metropolitan Planning Department representative
- Assistant City Manager/Development Services Director
- Public Works
- Finance Department
- Law Department
- Two private sector business representatives
- One lender
- Two Wichita Downtown Development Corporation staff/members
- Other subject matter experts as warranted by the project
- Management Analyst (non-voting), staff support



Sedgwick County/City of Wichita Economic Development Guidelines



A project will need to receive 70% of the available points in each of the three criteria categories in order to be considered for Downtown Development Incentives. If the evaluation determines that Downtown Development Incentives should be considered, the resulting rating from the evaluation matrix will determine the required form of the guarantee for public revenue shortfall and the debt service coverage ratio for public financing. Higher rated projects will receive the more favorable terms. If requested, parties requesting Downtown Development Incentives may modify their proposal after the initial evaluation in order to improve the terms through a subsequent evaluation. Final approval of Downtown Development Incentives will be by the City Council.

The minimum threshold and categorical criteria upon which a request for Downtown Development Incentives will be evaluated are:

Minimum Threshold Criteria for the Developer

1. 10% equity
2. Guarantee for a proportional share of public revenue shortfall. For projects that involve multiple phases or developers, each phase or developer must provide a guarantee for a percentage of the public revenue shortfall proportional to that phase's or developer's portion of the overall project.
3. Letter of interest from primary lender or equity investor
4. Applicant Disclosure Questionnaire

Minimum Threshold Criteria for the Project

1. Consistency with Project Downtown's General Design Guidelines and Project Development Criteria. A Design Review Process has been established to determine a project's eligibility for this criterion.
2. Economic analysis confirms that the project is infeasible "but for" public investment.
3. Public investment is in a public asset as defined in Project Downtown.
4. Minimum private to public capital investment ratio of 2 to 1.
 - Infrastructure improvements not currently in the City's CIP but requested for the development will be considered a public investment when calculating the ratio of 2 to 1.
 - For projects that involve multiple phases of private capital investment but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development.
5. Minimum public debt service coverage ratio of 1.2 to 1

Public Benefit/Compatibility with Overall Downtown Plan

1. Project Location/Design – Projects will be evaluated on the extent to which the project exceeds the General Design Guidelines and Project Development Criteria in the following four areas:
 - a. Location – Project Downtown identifies priority locations such as Catalyst Sites and Walkable Development Focus Areas. Projects will be evaluated on the extent to which they utilize these priority locations in a manner that fosters additional development on properties surrounding the project site. Projects also will be evaluated on the ability to connect existing downtown districts and nodes and on impacts to the transportation



Sedgwick County/City of Wichita Economic Development Guidelines



- system, such as providing a strategic walking connection to the river or accommodating a key transit stop.
- b. Design –The design of projects will be evaluated on the extent to which they exceed the minimum thresholds. Project Downtown encourages extraordinary design that contributes to Wichita’s identity as a community of distinction. Additionally, the Project Development Criteria identifies encouraged design features for each downtown district as “optional criteria.” Projects will be evaluated on the extent to which they contribute to community identity and include encouraged design features.
 - c. Land Use/Project Type –The Project Development Criteria identifies encouraged land uses for each downtown district as “optional criteria.” Projects will be evaluated on the extent to which they include these encouraged land uses. Projects also will be evaluated on the extent to which they provide a new attraction, destination business, or major employer to the community.
 - d. Other – Developers are encouraged to propose projects that further other priorities identified in Project Downtown. Projects will be evaluated on the extent to which they accomplish additional Project Downtown priorities.
2. Return on Public Investment – Project’s return on public investment will be reviewed by the Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model.
 3. Public Purpose – Projects will be evaluated on the extent to which they accomplish the following public purposes:
 - a. Public asset serves developments beyond the project site
 - b. Project promotes sustainability
 - c. Other public benefits identified by the developer
 - d. Project helps accomplish Project Downtown vision and strategies
 - e. Project enhances the community’s economic base

Proposed Project Characteristics

1. Market Analysis – The project’s market analysis will be evaluated on the following criteria:
 - a. Extent that the current Project Downtown market analysis confirms project feasibility, or
 - b. Alternatively, confirmation of project feasibility by a separate third-party market analysis
2. Pro Forma – The project pro forma will be evaluated on the following criteria:
 - a. Rate of private investment return
 - b. Rents/prices consistent with performance of comparables
 - c. Projected rate of absorption consistent with performance of comparables
 - d. Long-term project solvency
3. Developer Equity – The amount and form of developer equity in the project will be evaluated.
4. Share of Public Funding – The extent to which private funding of the project exceeds the minimum threshold will be evaluated.
5. Lender Commitment – The financial stability of the lender and the form of lender commitment will be evaluated.

Current Experience and Creditworthiness of Developer

1. Financial Statements – The financial statements of the developer, development entity, key project partners, and guarantors will be evaluated on criteria such as the following:
 - a. Cash ratio of liquid assets to current liabilities
 - b. Debt/equity ratio



Sedgwick County/City of Wichita Economic Development Guidelines



- c. Debt service coverage ratio
- d. Profit margin
- e. Return on investment
- f. Auditor's opinion on fairness of presentation
- g. Auditor's opinion on appropriateness of going concern assumption
- 2. Developer Experience and Qualifications – The developer's qualifications and experience will be evaluated on the following criteria:
 - a. Developer credit history
 - b. Letters of good standing from previous lenders
 - c. Dun & Bradstreet Financial Stress Score
 - d. Certificate of Good Standing from the Secretary of State and Tax Clearance Certificate from the Department of Revenue
 - e. Previous credit defaults by developer or key partners
 - f. Experience with similar projects
 - g. Number of projects completed by the development team
 - h. Past project experience with the City of Wichita
 - i. References, especially from other municipalities that have worked with the development team

DEVELOPMENT AGREEMENT REQUIRED

Concurrently with, or prior to, the approval of Downtown Development Incentives by the City Council, the City and the developer shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed downtown development project. The Development Agreement will include a site plan and elevation drawings or renderings of the project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement will 1) set forth the method and manner for disbursement of funds by the respective parties to pay for eligible project costs, 2) define the responsibilities of the respective parties, 3) define the minimum investment and 4) identify all milestones/benchmarks with associated timeframes for the project to achieve in order for it to maintain its eligibility for incentives. The assignment of Development Agreement rights to any third-party assignee will require prior written consent of the City, which may be granted or withheld at the sole discretion of the City.

"GAP" FINANCING REQUIREMENT

Approval of Downtown Development Incentives will require a financial analysis demonstrating that the project would not otherwise be possible without the use of the requested development incentive ("gap" analysis). Parties requesting Downtown Development Incentives will be required to provide the City pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources are not available to fund the entire cost of the project and still provide the developer a reasonable market rate of return on investment. The reasonableness of the rate of return on investment will be determined by dividing net operating income by development cost and comparing that rate to the overall capitalization rate for the land use(s) proposed. Parties requesting Downtown Development Incentives



Sedgwick County/City of Wichita Economic Development Guidelines



shall use current market conditions and input from local appraisers and lenders in determining the capitalization rate.

BACKGROUND CHECK

Developer will pay a \$250 City administrative fee and external vendor vetting fee on all parties requesting Downtown Development Incentives as well as all project partners. External vendor fees will be determined by the number of individuals and their related operating entities. Parties requesting Downtown Development Incentives are required to furnish the City the personal and business information needed to carry out such a background check.

DESIGN GUIDELINES

All projects must be consistent with Project Downtown's General Design Guidelines and Project Development Criteria in order for it to be eligible for Downtown Development Incentives.

Consistency of project design with the Project Downtown guidelines will be determined by the Downtown Design And Innovation Center (DDIC). Parties requesting Downtown Development Incentives must participate in the design review process established by the DDIC prior to submitting their request.

All property improvements commenced under a project supported by Downtown Development Incentives shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

ANNUAL REPORTING

Developers shall provide an annual report to the City no later than 30 days following the anniversary date of the Development Agreement. The annual report shall detail the developer's progress towards completing all responsibilities and milestones of project completion identified in the Development Agreement. The City reserves the right to audit the account at its discretion and expense.

WAIVER OF POLICY

Should the City Council determine the terms of this policy inappropriate to evaluate a particular request for Downtown Development Incentives, it may, by majority vote, waive or modify the binding effect of this policy in regard to that project.



Sedgwick County/City of Wichita Economic Development Guidelines



PROPERTY TAX ABATEMENT / SALES TAX EXEMPTION

INDUSTRIAL REVENUE BONDS (IRBs)

A mechanism by which companies and developers may achieve either a property tax abatement, a sales tax exemption, or both. For consideration, a project must qualify under the guidelines listed below.

APPLICATION FEE

\$2,500 - Industrial Revenue Bonds (sales tax exemption & property tax abatement)

\$1,000 - (Sales tax exemption only)

ADMINISTRATIVE SERVICE FEE

\$2,500 annual fee for maintenance of IRB accounts

BACKGROUND AND PURPOSE

- A. Business Activity: To be eligible for any public incentives, a business must be engaged in one or more of the following activities:
1. *Advanced Manufacturing & Materials*. Determined by appropriate NAICS codes.
 2. *Professional Services*. 30% or more of revenues must be derived from transactions originating outside Sedgwick County.
 3. *Research and Development*. The conducting of research, development or testing for aviation, scientific, medical, food product or industrial purposes.
 4. *Warehousing and Distribution*. Majority of goods stored/shipped must be destined for end-users located outside Sedgwick County.
 5. *Corporate Headquarters*. May include "back office" operations and customer service activities, but shall not include out-bound call centers. Majority of revenues must be derived from transactions originating outside the Sedgwick County.
 6. *Transportation & Logistics*. Freight or passenger transportation services. Majority of revenue must be derived from interstate commerce/travel.
 7. *Tourism*. Attractions considered likely to attract at least 30% of attendees from outside the Sedgwick County.
 8. *Healthcare*. Regional medical centers and specialty hospitals considered likely to attract at least 30% of patients from outside the Sedgwick County.
 9. *Speculative Industrial, Flex, Office & Airfield Hangar Buildings*. As defined in Section 9 of the Incentives section below.
 10. *501(c) (3) Organizations*. Projects that are consistent with the organization's charitable purpose.



Sedgwick County/City of Wichita Economic Development Guidelines



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11. Businesses that have a principal business activity, product or service identified by the [Regional Growth Plan](#).
- a. *Advanced Manufacturing & Materials*
 - b. *Aerospace*
 - c. *Agriculture*
 - d. *IT Systems & Support*
 - e. *Health Care*
 - f. *Energy*
 - g. *Transportation and Logistics*
- B. Value Added Job: A value added job produces goods and/or services that are sold predominately outside of the Sedgwick County. Importing wealth into the community through value added jobs grows the local economy. Whereas non-value-added jobs typically re-circulate wealth within the community.
- C. Wage and Salary Criteria: A business may be considered for public incentives only if the wages paid to its net new employees are equal to or greater than 120% of the median wages within Sedgwick County as determined by the Kansas Department of Labor Wage Survey. According to the 2019 edition of the Kansas Wage Survey, the median income of all occupations in Sedgwick County was \$35,768. Therefore, 120% of the median income would be \$42,921. In addition to meeting wage requirements, jobs created must include health care benefits. If health care benefits are not offered, wages must be 150% of the average wage as stated above.
- D. Return on Public Investment (ROI): Requests for local incentives may require a cost/benefit analysis completed prior to consideration by the appropriate governing body as stated by State statute or local policy. A designated agent on behalf of the City and County will conduct the cost/benefit analyses and any fees associated with this application are the responsibility of the applicant. The ratio of public benefits to public costs, each on a present value basis, should be 1.0 to 1.0 for both the general and debt service funds for the City of Wichita; for Sedgwick County should be 1.0 overall. No cost/benefit analysis shall be required for projects seeking a sales tax exemption only, or for 501(C)(3) organizations, unless required in other sections of these guidelines.
- E. Community and Workforce Development Benefits: Projects that provide additional community benefits may be considered for additional incentives or a reduced threshold to qualify for incentives based on the following criteria (must be defined in the application to the City or County):
1. *Community benefits (must meet one of the following):*
 - a. *Location: Locating within a redevelopment area of the City, as defined by the City Council or providing employment to targeted populations.*

Redevelopment Area is defined as a location where one of the following elements exist:

 - (1) *More than 30% of the population lives at or below the federal poverty line (\$26,200 for a family of four, as of March 1, 2020 according to HHS Guidelines).*



Sedgwick County/City of Wichita Economic Development Guidelines



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- (2) *More than 30% of the population is unemployed.*
 - (3) *More than 30% of the structures are vacant or uninhabitable.*
 - (4) *Located within an Urban Renewal or Opportunity Zone Area*
 - (5) *Other factors or special areas as defined by the City Council.*
 - b. Population: Providing employment to a targeted population. A targeted population is defined by one of the following factors.
 - (1) Difficult to employ populations, including individuals with a criminal record.
 - (2) Living below 125% of the federal poverty line (\$32,750 for a family of four, as of March 1, 2020 according to HHS Guidelines).
 - (3) Chronic unemployment
 - (4) Low skill/under employed workers.
 - c. Wages must be at, or above, 100% of the median wage within Sedgwick County as determined by the Kansas Department of Labor Wage Survey.
 - 2. Any project must provide at least one of the additional benefits or training to employees in order to be considered for the Community and Workforce Development exemption.
 - a. *Health care benefits (50%)*
 - b. *Job training and certification*
 - (1) *Any job training, or certification programs, must be defined in the application to the City or County*
 - (2) Any job training, or certification programs, must be demonstratable/documentable (i.e., contracts with the State of Kansas, on-the-job training manuals, etc.)
 - (3) Any job training, or certification programs, identified in the application to the City must be documented at the five-year compliance review
 - c. Education: Provide tuition reimbursement or other form of continued education.
 - (1) *Any tuition reimbursement, or other form of continued education, must be defined in the application*
 - (2) *Any tuition reimbursement, or other form on continued education, must be demonstratable/documentable (employment contract, HR forms, etc.)*
 - (3) *Any tuition reimbursement, or other continued education defined in the application must be documented at the five-year review*
 - (4) *Other methods of demonstrating/documenting tuition reimbursement, or other forms of continuing education could include any affiliations with programs offered through organizations such as WSU Tech, Butler County College, National Center for Aviation Training, receiving funds from the State from the Kansas Industrial Training program, or Kansas Industrial Retraining program (or other programs as may developed over time). This list is not exhaustive. Other programs will be considered as well.*



Sedgwick County/City of Wichita Economic Development Guidelines



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- F. In addition to the above provisions, the City Council or County Commission may consider the following information when deciding whether to approve an incentive.
- 1) The project is for a target industry as determined by the most recent strategic/cluster analysis for Economic Development for Sedgwick County/City of Wichita;
 - 2) The size of the project based upon private investment in the site development, plant facilities and infrastructure;
 - 3) The total number of net new jobs, wages, benefits and types of jobs created;
 - 4) The relationship between job creation and total investment;
 - 5) Potential for future expansion and increased employment;
 - 6) Potential for retention of existing employment where it can be demonstrated that without incentives the jobs may be moved away from the area or eliminated, as evidenced by a written statement from the company.
 - 7) Potential for diversification of the regional economy;
 - 8) Potential for inclusion of disadvantaged minority or women-owned businesses as contractors, suppliers, etc.
 - 9) Project specific issues that impact upon local infrastructure responsibilities of the City or County;
 - 10) Project specific incentives that may be pursued to stimulate other development areas that the City or County may deem of significant benefit to the community;
 - 11) Economic development incentives from other local governments and/or the State;
 - 12) Financial impact and budget ramifications.
 - 13) Community and Workforce Development Benefits.
 - 14) Sustainable Development/Use of alternative energy.
- G. The City or County may conduct legal and/or financial research regarding the company as part of eligibility determination.
- H. Economic development incentives may not be transferred or otherwise conveyed to another party without approval of the City Council or Board of County Commissioners.
- I. The governing body of either of the Issuers reserves the right to waive any or all of the foregoing requirements or exempt any Project therefrom in the event circumstances exist to warrant such waiver or exemption.

Implementation

All Economic Development Incentives will be formalized in a written agreement by the City of Wichita or Sedgwick County and the recipient company. The recipient company will be required to meet the following performance criteria:

- A. Jobs created and payroll commitments
- B. Capital investment in real property



Sedgwick County/City of Wichita Economic Development Guidelines



C. Compliance with wage requirements

D. Compliance with all applicable governmental laws, rules and regulations

Compliance with any conditions imposed by the Economic Development Incentive Agreement.

Incentives

The City or County will only consider giving incentives to companies relocating from neighboring communities when existing local conditions preclude continued operations in that community.

When a project includes tax abatements/exemptions or infrastructure improvements, the private/public funding ratio of overall project costs must be 2 to 1. The present value of property and sales tax exemptions will be considered public funding.

A. *Property Tax Abatement*

1. The City of Wichita and Sedgwick County are authorized under sState law to grant tax abatements on private business property either in connection with the issuance of Industrial Revenue Bonds (IRBs) or under Article 11 of the state constitution that enables Economic Development Exemptions (EDX) for certain types of businesses. While IRB abatements may be granted for all types of business included in the list of eligible businesses, EDX abatements are limited to expanding manufacturing, research and development and warehouse and distribution businesses that create or retain jobs. The City or County, as Issuer, will not issue Bonds for projects located outside of its organizational boundaries unless the Project is located in an industrial district or the requesting entity has its primary headquarters are located within such Issuer's organizational boundaries.
2. Property tax abatements require a public hearing prior to approval by the governing body. One public hearing will be held prior to the issuance of bonds. No additional public hearing will be required.
3. Property taxes may be abated for new improvements to real property and for newly acquired items of personal property not otherwise exempt under Kansas law, used by an eligible business in connection with an expansion or relocation of the business' operations in Wichita or Sedgwick County. Land and existing buildings are not generally eligible for property tax abatement. Existing buildings may only be considered for tax abatement if the building has been vacant for at least two years and is acquired by a party not related to the previous owner. Exceptions may be made for buildings used by target industries as determined by the most recent economic development strategic/cluster analysis for Sedgwick County/Wichita and in cases where reuse of the building within two years is deemed unlikely. Otherwise, no existing property will be removed from the tax rolls. Land will not be considered for tax abatements.
4. The term of tax abatement on real taxable property improvements under these guidelines shall be an initial term of five years, subject to the following clause, plus an additional five years subject to review and approval of the originating body at the end of the initial term. Tax abatement on eligible items of personal property shall be limited to a term of five years.



Sedgwick County/City of Wichita Economic Development Guidelines



5. Any company committing to a five-year capital investment of at least \$25,000,000, with annual bonds issues, where the nature of the investment is general improvements to facilities located on a business campus, shall be granted a 10-year tax abatement for those improvements.
6. The recommended percentage of property taxes to be abated shall be cumulative, based on new job creation, capital investment by the eligible business, and additional considerations as follows (cumulative):
- New Jobs
 - 5-25 26-50 >50
 - 30% 40% 50%
 - New Capital Investment \$1M-<\$5M \$5M-10M >\$10M
 - 40% 50% 60%
 - Additional Considerations
 - Regional Growth Plan sector 10%
 - Utilizing State, federal or utility incentives 10%
 - Sustainable Development/Alternative Energy use 15%
 - Investing in, or funding, entrepreneurship 25%
 - Talent attraction plan (must be documented) 25%
 - Locating in Redevelopment Area 25%
 - Community and Workforce Development Benefits 25%
 - Example: If a company is projecting it would create 10 new jobs, it would qualify for a 30% abatement. If it is also investing \$4,000,000 in facilities and/or machinery and equipment, it would qualify for an additional 40%, totaling 70%. If the company is in a Regional Growth Plan sector, add another 10% (now 80% total). If the company is also utilizing State of Kansas incentives, add another 10% for a total of a 90% abatement.
7. Payments-In-Lieu-of-Taxes (PILOTs): Any business receiving a tax abatement may be required to make payments in lieu of taxes equal to the amount of property tax abated. Said PILOT payments shall be payable to the Sedgwick County Treasurer for proportional distribution to all local taxing jurisdictions which levy taxes on the abated property. A business may also be required to make PILOT payments at any time in the event of non-compliance with the conditions imposed by the economic development incentive agreement, as an alternative to complete cancellation of the tax abatement.
8. Service Fee Payments: The City of Wichita and Sedgwick County reserve the right to impose on any business receiving tax abatements the payment of service fees through the provisions of the economic development incentive agreements for services provided by the applicable Unified School District and the Sedgwick County Fire District. The amount of the service fee shall be based on the tax rate of the applicable Unified School District and/or the Sedgwick County Fire District, and any service fees thus paid shall be remitted to such School and/or Fire District.



Sedgwick County/City of Wichita Economic Development Guidelines



9. Speculative Industrial, ~~Flex~~, ~~Office~~ & Airfield Hangar Buildings:

Applicable fees are the same as IRBs, as this incentive requires the issuance of IRBs.

• Definitions ~~(source NAOIP)~~:

a. Speculative Building:

A building developed and constructed without any preleasing in place. Construction commences without a prelease when the developer believes there is so much demand for that type of building in that market or submarket that a lease commitment is bound to come through.

b. Industrial Building:

A structure used primarily for manufacturing, research and development, production, maintenance, and storage or distribution of goods or both. It can include some office space. Industrial buildings are divided into three primary classifications: manufacturing, warehouse or distribution, and flex. (The typical characteristics of the most common types of industrial buildings are shown in the Industrial Building Types Matrix. below).

- Minimum 100,000 square foot building
- Minimum clear height of 28'
- Concrete tilt up preferred
- Must have architectural façade on public street facing sides

(1) *Minimum* lease must be for 25,000 square feet, ~~or more~~

~~(2) Must begin construction within 120 days of Council approval and complete construction within 15 months of Council approval~~

~~(3)~~(2) Property tax abatement is 95% for first4st five years and 50% for second2nd five years if 50% ~~or more~~ is *leased* at five-year mark

c. Flex Facility:

As its name suggests, an industrial building designed to be used in a variety of ways. It is usually located in an industrial park setting. Specialized flex buildings can include service centers, showrooms, offices, warehouses and more. (Typical characteristics are shown in the Industrial Building Types Matrix below)

- Minimum 75,000 square foot building
- Minimum of 30% of the space is office
- Must have architectural façade on public street facing sides

(1) *Minimum lease must be for 10,000 square feet*, ~~or more~~



Sedgwick County/City of Wichita Economic Development Guidelines



~~(2) Must begin construction within 120 days of Council approval and complete construction within 15 months of Council approval~~

~~(3)~~(2) Property tax abatement is 95% for first~~4~~st five years and 50% for second~~2~~nd five years if 50%₊ or more₊ is leased at five-year mark

d. Office Building:

A Class A building structure providing environments that are conducive to the performance of management and administrative activities, accounting, marketing, information processing, consulting, human resources management, financial and insurance services, educational and medical services, and other professional services.

- Minimum 60,000 square foot building (office space). Building may be mixed, use but minimum square footage applies only to office space.
- Must have architectural façade on public street facing sides

(1) Minimum lease must be for 7,500 square feet, ~~or more~~ (once the facility is 50% leased, the minimum shall be 3,000 square feet)

~~(2) Must begin construction within 120 days of Council approval and complete construction within 15 months of Council approval~~

~~(3)~~(2) Property tax abatement is 95% for first~~4~~st five years and 50% for second~~2~~nd five years if 50%₊ or more₊ is leased at five-year mark

(Source: NAIOP-Commercial Real Estate Terms and Definitions)

e. Airfield Hangar

A large structure primarily used for maintenance, repair and overhaul (MRO) including storage, painting, service, retrofitting, rebuilding, research or inspection of aircraft or aircraft components.

- Minimum 50,000 square foot building (75,000 square foot preferred) with a minimum clear height of 45 feet (65,000-70,000 feet preferred to accommodate wide body programs). Requests for smaller hangars at Colonel James Jabara Airport will be considered.
- May not be developed for personal use.
- May be developed on a private runway, military runway or public runway.
- Property tax abatement is 95% for first five years and 50% for second five years if 50% or more is leased at the five-year mark.
- If on a publicly owned runway at Wichita Dwight D. Eisenhower National Airport or Colonel James Jabara Airport, the project would be eligible for certain incentives determined by the Wichita Airport Authority that would adhere to relevant Federal Aviation Administration (FAA) standards.

e.f. -Time frame

Building must start construction within 120 days of approval of a Letter of Intent by the governing body₊ and must complete construction within 15 months from approval of a Letter of Intent ~~in order~~ to receive the full benefits of the program.

Adopted 10.06.20, Updated 12.14.21 and 04.12.22



Sedgwick County/City of Wichita Economic Development Guidelines



Exceptions may~~de~~ be made to the requirement of the completion date if multiple buildings are projected or if supply chains or regulatory requirements (e.g., FAA) dictate otherwise. -Such completion date will be defined in the Letter of Intent.

~~f.~~ **Industrial Revenue Bonds (IRB's)** - Projects must u~~se~~utilize IRBs ~~in order~~ to qualify for: ~~the benefits.~~

g. Benefits:

- (1) *Sales tax exemption on materials.*
- (2) 95% Abatement of the increased Real Estate Tax for the initial 5-year period once the Certificate of Occupancy is issued. Abatement of the increased Real Estate Tax for the second 5-year period will be 50%.



Sedgwick County/City of Wichita Economic Development Guidelines



- h. Annual Reporting** - Developers shall provide an accounting to the City no later than 30 days following the end of the calendar year. The annual report shall provide an account of all lease activity within the spec project including the names of all companies, square footage occupied and prior location of company.

Industrial Building Types Matrix

Manufacturing		Warehouse				Flex	
Primary Type	General Purpose	General Purpose Warehouse	General Purpose Distribution	Truck Terminal	Fulfillment Center	General Purpose Flex	Service Center or Showroom
Primary Use	Manufacturing	Storage	Distribution	Truck Trans-shipment	Distribution	Research and Development, Cold Storage, Office, Lab, Light Manufacturing, High-tech, Data or Call Center	Retail Showroom
Subsets	Heavy, Light Manufacturing	Bulk Warehouse, Cold or Refrigerator Storage, Freezer Storage, High-Cube	Overnight Delivery Services, Air Cargo	Heavy, Light Manufacturing	Delivery directly to consumer		
Size (sf)	Any	Any	Any	Any	100,000 – 1,000,000 +	Any	Any
Clear Height (ft)	10+	16+	16+	12–16	32+	10–24	Any
Loading Docks or Doors	Yes	Yes	Yes	Cross-dock	Yes	Yes	Yes
Door-to-square-foot Ratio	Varies	1:5K–15K	1:3K–1K	1:50K–5K	Varies	1:15K+	1:10K
Office Percentage	< 20%	< 15%	< 20%	< 10%	< 20%	30–100%	30+%
Vehicle Parking Ratio	Varies	Low	Low	Varies	Very High	High	High
Truck-turning Radius (ft)	130	130	120–130	130	130	110	110

Note: This matrix is intended to be an aid in classifying the principal industrial building types. It is subject to the following considerations:

- These are intended to be typical characteristics of different properties, but actual characteristics may vary.
- In classifying properties, the owner should select the classification that most closely fits the design and use of the property.
- The most important characteristics of each type are highlighted. Although the characteristics are not "acid tests," they should guide the user in most instances.
- The truck-turning radius is an important consideration and varies by building size. Large, pure distribution facilities need a turning radius of at least 130 feet, medium to large facilities need 120 feet and smaller facilities typically need 110 feet.



Sedgwick County/City of Wichita Economic Development Guidelines



B. Sales Tax Exemptions

Sales tax exemptions may be provided for purchases financed by Industrial Revenue Bonds (IRBs) and are subject to approval by the City Council or the Board of County Commissioners.

1. Requirements for Submitting a Proposal

Proposals shall be submitted to the Office of Economic Development for either governing body and shall contain the following:

- a. Completed Economic Development Application; and
- b. Application Fee: \$2,500 for IRB / \$1,000 for sales tax exemption only projects
- c. Cost/Benefit Analysis from Center for Economic Development and Business Research at Wichita State University (for tax abatement requests only)

2. Compliance

- a. Annual on-site reviews may be conducted by City or County staff to establish compliance with the written agreement between the City of Wichita and/or Sedgwick County and the recipient company.
- b. Tax abatements on real property will be reviewed after an initial term of five years; continued abatement is subject to review and approval by the City Council or Board of County Commissioners at the end of the initial term. The review will be based on the company's performance in meeting the terms and conditions in the written agreement and will include any statements provided in the initial application.
- c. The City of Wichita or Sedgwick County may amend an incentive agreement to reduce the recipient's obligations regarding employment levels, wage requirements, or noncompliance penalties in the event of a federally-declared disaster or economic downturn.

An economic downturn is evidenced by a significant decline (at least a 5-point decline) in the WSU Current Economic Conditions Index from the point at which the incentive agreement was signed.

In such event, the economic development incentives may be continued if a majority of compliance criteria are met, including capital investments, actual ROI, and temporarily achieving job creation commitments.

- d. Whenever practicable, the City or County will include "clawback" provisions (relating to repayment or cessation of incentives) in all incentive agreements, and the City or County may exercise such provisions when the terms of the incentive agreements have not been met. Such clawback provisions will include payment-in-lieu-of-taxes equal to the dollar value of the last ten years of abated property taxes if a business moves its operations to another city or county and ceases its operations in Wichita or Sedgwick County within five years of receiving such abatements. For each year the company stays in Wichita/Sedgwick County after the expiration of the tax abatement, the amount of repayment shall be reduced by 20%. For example, if a company leaves Wichita/Sedgwick County in the first year after the expiration of the tax



Sedgwick County/City of Wichita Economic Development Guidelines



abatement, it shall repay 100% of the last ten years of property taxes abated. If the company leaves in year two, it shall repay 80%, etc.

- e. In the event a company is determined to be in default, but remains in business in Wichita/Sedgwick County, the clawback would be a proportionate amount of the taxes abated. For example, if a company is 10% short of the projected job creation, the clawback would be 10% of the value of the abated taxes.



Sedgwick County/City of Wichita Economic Development Guidelines



PROPERTY TAX ABATEMENT

ECONOMIC DEVELOPMENT EXEMPTION (EDXs)

A mechanism by which expanding, or relocating, companies may achieve a property tax abatement if the company is in a qualified industry as defined below. For consideration, a project must qualify under the guidelines listed below.

APPLICATION FEE

\$2,500 – Economic Development Exemption

ADMINISTRATIVE SERVICE FEE

\$2,500 annual fee for maintenance of EDX accounts

BACKGROUND AND PURPOSE

- A. Business Activity: To be eligible for any public incentives, a business must be engaged in one or more of the following activities:
 - 1. Manufacturing. Determined by appropriate NAICS codes
 - 2. Research and Development. The conducting of research, development or testing for aviation, scientific, medical, food product or industrial purposes.
 - 3. Warehousing and Distribution. Majority of goods stored/shipped must be destined for end-users located outside the Wichita MSA.
- B. Value Added Job: A value added job produces goods and/or services that are sold predominately outside of the MSA. Importing wealth into the community through value added jobs grows the local economy. Whereas non-value-added jobs typically re-circulate wealth within the community.
- C. Wage and Salary Criteria: A business may be considered for public incentives only if the wages paid to its net new employees are equal to or greater than 120% of the median wages within Sedgwick County as determined by the Kansas Department of Labor Wage Survey. According to the 2019 edition of the Kansas Wage Survey, the median income of all occupations in Sedgwick County was \$35,768. Therefore, 120% of the median income would be \$42,921. In addition to meeting wage requirements, jobs created must include health care benefits. If health care benefits are not offered, wages must be 150% of the average wage as stated above. If a company is creating 15 jobs, but only 7 of the net new jobs meet the wage threshold, then only seven jobs will be included in the cost benefit analysis.
- D. Return on Public Investment (ROI): All requests by businesses for local incentives will have a cost/benefit analysis completed prior to consideration by the appropriate governing body. A designated agent on behalf of the City and County will conduct the cost/benefit analyses and any fees associated with this application are the responsibility of the applicant. The ratio of public benefits to public costs, each on a present value basis, should be 1.0 to 1.0

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



for both the general and debt service funds for the City of Wichita; for Sedgwick County should not be less than 1.0 overall.

- E. Community and Workforce Development Benefits: Projects that provide additional community benefits may be considered for additional incentives or a reduced threshold to qualify for incentives based on the following criteria (must be defined in the application to the City or County):
1. *Community benefits (must meet one of the following):*
 - a. *Location: Locating within a redevelopment area of the City, as defined by the City Council or providing employment to targeted populations.*

Redevelopment Area is defined as a location where one of the following elements exist:

 - (1) *More than 30% of the population lives at or below the federal poverty line (\$26,200 for a family of four, as of March 1, 2020, according to HHS Guidelines).*
 - (2) *More than 30% of the population is unemployed.*
 - (3) *More than 30% of the structures are vacant or uninhabitable.*
 - (4) *Located within an Urban Renewal or Opportunity Zone Area*
 - (5) *Other factors or special areas as defined by the City Council.*
 - b. *Population: Providing employment to a targeted population. A targeted population is defined by one of the following factors.*
 - (1) *Difficult to employ populations, including individuals with a criminal record.*
 - (2) *Living below 125% of the federal poverty line (\$32,750 for a family of four, as of March 1, 2020, according to HHS Guidelines).*
 - (3) *Chronic unemployment*
 - (4) *Low skill/under employed workers.*
 - c. *Wages must be at, or above, 100% of the median wage within Sedgwick County as determined by the Kansas Department of Labor Wage Survey.*
 2. Any project must provide at least one of the additional benefits or training to employees in order to be considered for the Community and Workforce Development exemption.
 - a. *Health care benefits (50%)*
 - b. *Job training and certification*
 - (1) *Any job training, or certification programs, must be defined in the application to the City or County*
 - (2) *Any job training, or certification programs, must be demonstratable/documentable (i.e., contracts with the State of Kansas, on-the-job training manuals, etc.)*



Sedgwick County/City of Wichita Economic Development Guidelines



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- (3) Any job training, or certification programs, identified in the application to the City must be documented at the five-year compliance review
 - c. Education: Provide tuition reimbursement or other form of continued education.
 - (1) *Any tuition reimbursement, or other form of continued education, must be defined in the application*
 - (2) *Any tuition reimbursement, or other form on continued education, must be demonstratable/documentable (employment contract, HR forms, etc.)*
 - (3) *Any tuition reimbursement, or other continued education defined in the application must be documented at the five-year review*
 - (4) *Other methods of demonstrating/documenting tuition reimbursement, or other forms of continuing education could include any affiliations with programs offered through organizations such as WSU Tech, Butler County College, National Center for Aviation Training, receiving funds from the State from the Kansas Industrial Training program, or Kansas Industrial Retraining program (or other programs as may developed over time). This list is not exhaustive. Other programs will be considered as well.*
 - F. In addition to the above provisions, the City Council or County Commission may consider the following information when deciding whether to approve an incentive.
 - 1) The project is for a target industry as determined by the most recent strategic/cluster analysis for Economic Development for Sedgwick County/City of Wichita;
 - 2) The size of the project based upon private investment in the site development, plant facilities and infrastructure;
 - 3) The total number of net new jobs, wages, benefits and types of jobs created;
 - 4) The relationship between job creation and total investment;
 - 5) Potential for future expansion and increased employment;
 - 6) Potential for retention of existing employment where it can be demonstrated that without incentives the jobs may be moved away from the area or eliminated, as evidenced by a written statement from the company.
 - 7) Potential for diversification of the regional economy;
 - 8) Potential for inclusion of disadvantaged minority or women-owned businesses as contractors, suppliers, etc.
 - 9) Project specific issues that impact upon local infrastructure responsibilities of the City or County;
 - 10) Project specific incentives that may be pursued to stimulate other development areas that the City or County may deem of significant benefit to the community;



Sedgwick County/City of Wichita Economic Development Guidelines



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- 11) Economic development incentives from other local governments and/or the State;
 - 12) Financial impact and budget ramifications.
 - 13) Community and Workforce Development Benefits.
 - 14) Sustainable Development/Use of alternative energy.
- G. The City or County may conduct legal and/or financial research regarding the company as part of eligibility determination.
 - H. Economic development incentives may not be transferred or otherwise conveyed to another party without approval of the City Council or Board of County Commissioners.
 - I. The governing body of either of the Issuers reserves the right to waive any or all of the foregoing requirements or exempt any Project therefrom in the event circumstances exist to warrant such waiver or exemption.

Implementation

All Economic Development Incentives will be formalized in a written agreement by the City of Wichita or Sedgwick County and the recipient company. The recipient company will be required to meet the following performance criteria:

- A. Jobs created and payroll commitments
- B. Capital investment in real property
- C. Compliance with wage requirements
- D. Compliance with all applicable governmental laws, rules and regulations
- E. Compliance with any conditions imposed by the Economic Development Incentive Agreement.

Incentives

The City or County will only consider giving incentives to companies relocating from neighboring communities when existing local conditions preclude continued operations in that community.

When a project includes tax abatements/exemptions or infrastructure improvements, the private/public funding ratio of overall project costs must be 2 to 1. The present value of property and sales tax exemptions will be considered public funding.

A. Property Tax Abatement

1. The City of Wichita and Sedgwick County are authorized under State law to grant tax abatements on private business property either in connection with the issuance of IRBs or under Article 11 of the state constitution that enables Economic Development Exemptions (EDX) for certain types of businesses. While IRB abatements may be granted for all types of business included in the list of eligible businesses, EDX abatements are limited to expanding manufacturing, research and development and warehouse and distribution businesses that create or retain jobs.
2. Property taxes may be abated for new improvements to real property and for newly acquired items of personal property not otherwise exempt under Kansas law, used by an eligible business in connection with an expansion or relocation of the business' operations in Wichita or Sedgwick County. Land and existing buildings are not generally eligible for property tax abatement. Existing buildings may only be considered for tax



Sedgwick County/City of Wichita Economic Development Guidelines



abatement if the building has been vacant for at least two years and is acquired by a party not related to the previous owner. Exceptions may be made for buildings used by target industries as determined by the most recent economic development strategic/cluster analysis for Sedgwick County/Wichita and in cases where reuse of the building within two years is deemed unlikely. Otherwise, no existing property will be removed from the tax rolls. Land will not be considered for tax abatements.

- 3. The term of tax abatement on real taxable property improvements under these guidelines shall be an initial term of five years, plus an additional five years subject to review and approval of the originating body at the end of the initial term. Tax abatement on eligible items of personal property shall be limited to a term of five years.
- 4. The recommended percentage of property taxes to be abated shall be cumulative, based on new job creation, capital investment by the eligible business, and additional considerations as follows (cumulative):

- New Jobs
 - 5-25 26-50 >50
 - 30% 40% 50%
- New Capital Investment
 - \$1M-<\$5M \$5M-10M >\$10M
 - 40% 50% 60%
- Additional Considerations
 - Regional Growth Plan sector 10%
 - Utilizing State, federal or utility incentives 10%
 - Sustainable Development/Alternative Energy use 15%
 - Investing in, or funding, entrepreneurship 25%
 - Talent attraction plan (must be documented) 25%
 - Locating in Redevelopment Area 25%
 - Community and Workforce Development Benefits 25%
- Example: If a company is projecting it would create 10 new jobs, it would qualify for a 30% abatement. If it is also investing \$4,000,000 in facilities and/or machinery and equipment, it would qualify for an additional 40%, totaling 70%. If the company is in a Regional Growth Plan sector, add another 10% (now 80% total). If the company is also utilizing State of Kansas incentives, add another 10% for a total of a 90% abatement.

- 5. Payments-In-Lieu-of-Taxes (PILOTs): Any business receiving a tax abatement may be required to make payments in lieu of taxes equal to the amount of property tax abated. Said PILOT payments shall be payable to the Sedgwick County Treasurer for proportional distribution to all local taxing jurisdictions which levy taxes on the abated property. A business may also be required to make PILOT payments at any time in the event of non-compliance with the conditions imposed by the economic development incentive agreement, as an alternative to complete cancellation of the tax abatement.
- 6. Service Fee Payments: The City of Wichita and Sedgwick County reserve the right to impose on any business receiving tax abatements the payment of service fees through



Sedgwick County/City of Wichita Economic Development Guidelines



the provisions of the economic development incentive agreements for services provided by the applicable Unified School District and the Sedgwick County Fire District. The amount of the service fee shall be based on the tax rate of the applicable Unified School District and/or the Sedgwick County Fire District, and any service fees thus paid shall be remitted to such School and/or Fire District.

B. Sales Tax Exemptions

There are no sales tax exemptions available under the EDX program.

1. Requirements for Submitting a Proposal

Proposals shall be submitted to the Office of Economic Development for either governing body and shall contain the following:

- a. Completed Economic Development Application; and
- b. Application Fee: \$2,500 for EDX

2. Compliance

- a. Annual on-site reviews may be conducted by City or County staff to establish compliance with the written agreement between the City of Wichita and/or Sedgwick County and the recipient company.
- b. Tax abatements on real property will be reviewed after an initial term of five years; continued abatement is subject to review and approval by the City Council or Board of County Commissioners at the end of the initial term. The review will be based on the company's performance in meeting the terms and conditions in the written agreement.
- c. The City of Wichita or Sedgwick County may amend an incentive agreement to reduce the recipient's obligations regarding employment levels, wage requirements, or noncompliance penalties in the event of a federally-declared disaster or economic downturn.

An economic downturn is evidenced by a significant decline (at least a 5-point decline) in the WSU Current Economic Conditions Index from the point at which the incentive agreement was signed.

In such event, the economic development incentives may be continued if a majority of compliance criteria are met, including capital investments, actual ROI, and temporarily achieving job creation commitments.

- d. Whenever practicable, the City or County will include "clawback" provisions (relating to repayment or cessation of incentives) in all incentive agreements, and the City or County may exercise such provisions when the terms of the incentive agreements have not been met. Such clawback provisions will include payment-in-lieu-of-taxes equal to the dollar value of the last ten years of abated property taxes if a business moves its operations to another city or county and ceases its operations in Wichita or Sedgwick County within five years of receiving such abatements. For each year the company stays in Wichita /Sedgwick County after the expiration of the tax abatement, the amount of repayment shall be reduced by 20%. For example, if a company leaves Wichita/Sedgwick County in the first year after the expiration of the



Sedgwick County/City of Wichita Economic Development Guidelines



tax abatement, it shall repay 100% of the last ten years of property taxes abated. If the company leaves in year two, it shall repay 80%, etc.

In the event a company is determined to be in default, but remains in business in Wichita/Sedgwick County, the clawback would be a proportionate amount of the taxes abated. For example, if a company is 10% short of the projected job creation, the clawback would be 10% of the value of the abated taxes



Sedgwick County/City of Wichita Economic Development Guidelines



COMMUNITY IMPROVEMENT DISTRICT

FEES

Application Fee

\$5,000 – Non-refundable for new CID petitions
\$2,500 – Non-refundable for CID amendments

City Administrative Fees

For any approved CID, the City shall be paid an on-going administrative service fee, in an amount equal to 5% of the total CID revenues received by the City.

CID Origination Fee

The City and Developer will negotiate an Origination Fee that will be collected in one of the two ways listed below or a combination of the two, at the City's discretion:

- A. District Improvements/maintenance: The City will retain on an annual basis an amount equal to no less than 10% and no more than 25% of the CID revenue collected. Funds will be used for improvements and/or maintenance to public assets within the District.
- B. At Large: The fee will be deposited in a dedicated fund within the City and utilized to support the Land Bank in securing and maintaining additional Land Bank properties. The Developer will have the option to make payment upon approval of the CID or in equal annual payments for the term of the CID.

DEPOSIT

The City shall require a \$5,000 deposit as well. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal legal. This fee shall be replenished by the applicant if at any time the fund drops below \$2,500. The applicant shall replenish the fund to the \$5,000 level within 10 days of notice that it has dropped below \$5,000. Failure to replenish the deposit will result in City staff ceasing the processing of that project.

CID amendments will require a \$2,500 deposit and be required to be replenished when the balance falls below \$1,000.

PURPOSE AND BACKGROUND

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the "CID Act"), pursuant to which municipalities may create districts in which certain special taxes imposed and the revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs within the geographic bounds of the specified district. The creation of a Community Improvement District ("CID") is a particularly useful tool of economic development in that it can help facilitate beneficial private development and redevelopment without negatively impacting the tax base of the approving municipality.



Sedgwick County/City of Wichita Economic Development Guidelines



It is the standard of the City of Wichita to utilize the provisions of the CID Act to assist private developers by providing financing for commercial, industrial and mixed-use projects that meet the local eligibility criteria outlined below, subject to certain special local standard limitations outlined below. A CID can exist for a maximum of 22 years.

LOCAL ELIGIBILITY CRITERIA

It shall be the intention of the City to create a CID if, in the opinion of the City Council, the petition satisfies all statutory requirements of the CID Act and if creation of such CID would meet the following criteria:

- A. The CID will attract development which would enhance the economic climate of the City, act as a catalyst for future development or otherwise benefit the City or its residents.
- B. The CID will result in the construction of public or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible.
- C. The CID will promote redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen. Special consideration will be given to projects located in the existing target areas including: Opportunity Zone census tracts, the Central Business District, Urban Renewal, Redevelopment Areas or an area for which a neighborhood plan, a corridor plan or a redevelopment plan have been adopted by the City of Wichita.
 - (1) A list of current Neighborhood Plans is available on the [Wichita - Sedgwick County Planning site](http://Wichita-Sedgwick County Planning site), Wichita.gov/planning, and choosing Advanced Plans.
- D. The CID will be used to assist the development of commercial, industrial and mixed-use projects, and for common area amenities in residential developments that are called for in the Parks, Recreation and Open Space (PROS) Plan.
- E. The CID will not be used for projects that consist solely or primarily of operating costs; or projects in which construction has begun prior to approval by the City; or projects that are inconsistent with a neighborhood plan; or projects that include any of the following: sexually oriented businesses, community correctional facilities, half-way houses, drug or alcohol rehabilitation facilities, new or used car lots, multi-game, casino-style gambling facilities, and commercial billboard siting.
- F. The CID will support projects with total costs of not less than \$5,000,000 for projects where bonds are issued up front. This does not apply to pay-as-you-go projects.
- G. Minimum private to public capital investment ratio of 3 to 1 for CID-only projects, otherwise it shall be 2 to 1. For projects that involve multiple phases of private capital investment but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development.

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Sedgwick County/City of Wichita Economic Development Guidelines



- H. Restaurant chains will not be considered for CIDs in Greenfield projects
- I. Staff may consider market demand and saturation when evaluating the project.

CID PETITION PROCESS

A CID is formed by the petition of landowners within the proposed CID. According to the CID Act, a petition to create a CID must be signed by the owners of at least 55% of the total land area and total assessed property value within the proposed district. However, it is the standard of the City of Wichita that only petitions signed by 100% of property owners will be accepted. Upon receipt of the petition, the City Council may approve the CID. In cases in which no special sales tax is requested (i.e., only special property tax assessments are requested), the City Council may create the requested CID without notice or a public hearing. If a special sales tax is requested, the City Council must give notice and hold a public hearing pursuant to the CID Act. The City shall be paid a non-refundable application fee of \$5,000 with the formal submittal of any CID petition.

A CID petition must contain:

1. the general nature of the proposed CID project;
2. a statement of the public purpose being served by the use of CID financing;
3. the estimated cost of the proposed CID project including maximum amount of CID funding to be paid prior to termination of CID, based on 125% of the total estimated amount of CID revenue during the term of the CID or otherwise determined by the CID Cost Cap defined below;
4. the proposed method of financing the project (special assessments or special sales tax);
5. the proposed amount and method of assessment;
6. the proposed method of financing (pay-as-you-go or special obligation bonds);
7. a map of the proposed CID; and
8. the legal description of the boundaries of the proposed CID.

SOURCES OF FUNDING FOR CID IMPROVEMENTS

Landowners or developers seeking to form a CID may request to draw upon one of the following two revenue sources, or a combination of both, to fund eligible improvements:

- A. Special property tax assessments on the property within the district, or
- B. A special sales tax of up to 2% on all taxable sales within the district. The level of sales tax a project may receive will be determined by the project size:
 1. Projects under \$5,000,000 may receive up to 1%
 2. Projects \$5,000,000 to \$10,000,000 may receive up to 1.5%
 3. Projects over \$10,000,000 may receive up to 2%

Upon the creation of a CID by the City Council, revenue generated by these sources is available to pay for eligible improvements and costs. This can occur in one of two ways: a bond issuance or a pay-as-you-go dedicated account.



Sedgwick County/City of Wichita Economic Development Guidelines



CID Cost Cap – The maximum eligible project costs amount will be negotiated per project on a case-by-case basis to establish a “CID Cost Cap”. Projects will be evaluated to minimize the sales tax rate, CID term and maximum reimbursement. But shall not exceed 125% of the total estimated amount of CID revenue during the term of the CID.

Bond Issuance – In cases in which a bond issuance is requested, the City’s Economic Development Office will work with the landowners within the CID to calculate how much revenue will be raised from the CID revenues (the special property tax and/or special sales tax levied within the CID) and the principal amount of bonds that can be issued based on the CID revenue stream and a minimum 1.2 debt service coverage ratio. The City may then issue bonds in that amount and use the CID revenue to retire the debt. The proceeds from the sale of the bonds will be used on eligible improvements and costs pursuant to the development agreement.

While the CID Act permits the issuance of either full-faith and credit general obligation bonds or special obligation bonds, payable solely from the CID revenue, it is the standard of the City of Wichita to issue only special obligation CID bonds. For projects desiring to request full-faith and credit bonds to assist in financing the City will use special consideration and will review on a case-by-case basis. Developer must present a case that justifies City issuance of full-faith and credit bonds.

Pay-As-You-Go Account – As an alternative to a bond issuance, the landowners within the CID may request the establishment of a pay-as-you-go account. This account will be a dedicated account into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs.

Funds used to pay eligible CID costs, whether from bond proceeds or a pay-as-you-go account, will be held by the City or a third-party trustee, and disbursed to pay actual costs pursuant to a development agreement. Preference will be given to projects that use pay-as-you-go financing.

ELIGIBLE CID COSTS

The CID Act provides an exclusive list of eligible improvements and costs that may be paid for with CID funding. CID funds may be used to plan, design, engineer, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, extend or finance:

- (1) Land acquisition may be an eligible cost
- (2) Buildings, structures, and facilities;
- (3) Site improvements, including without limit sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, and water mains and extensions;
- (4) Parking;
- (5) Streetscape, lighting, streetlight fixtures, streetlight connections, streetlight facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;



Sedgwick County/City of Wichita Economic Development Guidelines



- (6) Parks, lawns, trees and other landscaping;
- (7) Communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
- (8) Paintings, murals, display cases sculptures, fountains and other cultural amenities visible to the public from public rights of way;
- (9) Airports, railroads, light rail and other mass transit facilities; and lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

The Act also permits the use of CID funds to pay ongoing operating expenses, including security, entertainment, public events, business promotion, employee training, and market studies; however, it is the standard of the City of Wichita that CID funds may only be used to pay eligible operating costs up to the maximum amount identified in the petition and may not be used for operating costs in residential developments.

PROCESS FOR CREATING A CID

All of the projects will be subject to the notice and hearing process.

PRELIMINARY REVIEW MEETING

Prior to consideration by the City Council, parties intending to request the creation of a CID shall submit a draft CID packet to the Economic Development Staff. Such draft CID packet shall include a draft CID petition, site plans, elevations and a project pro-forma. The draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Following the submission of a draft CID packet, Economic Development Staff, will hold a pre-petition meeting with the submitting party to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

“GAP” FINANCING REQUIREMENT

All CID projects will be analyzed to determine the need for financial assistance. CID projects financed on a “pay-as-you-go” will be reviewed to determine the amount and level of assistance needed.

Projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment.

BACKGROUND CHECK

Developer will pay a \$250 City administrative fee and external vendor vetting fee on all parties requesting Community Improvement Districts. Third-party fees will be determined by the number of individuals and their related operating entities. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Such information will be treated as confidential information to the maximum extent allowed by the KORA.

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



A. Approval Process

1. The City Council may adopt a resolution giving notice of a public hearing to consider the advisability of creating the CID.
 - i) Such resolution shall be published once each week for two consecutive weeks in the City's official newspaper and shall be sent by certified mail to all owners and occupants of property within the proposed district.
 - ii) The second publication of such resolution shall occur at least seven (7) days prior to the date of the hearing and the certified mailed notice shall be sent at least ten (10) days prior to the hearing.
 - iii) Such resolution shall contain the following information:
 - (1) Time and place of the hearing;
 - (2) General nature of the proposed district;
 - (3) Estimated cost of the project;
 - (4) Proposed method of financing the project, including, if applicable, the issuance of full-faith and credit bonds;
 - (5) The proposed amount of the CID sales tax, if any;
 - (6) The proposed amount and method of assessment, if any;
 - (7) A map of the proposed district; and
 - (8) A legal description of the proposed district.
2. Following the hearing, the City Council may by majority vote approve the CID by ordinance.
 - i) The ordinance shall:
 - (1) Authorize the project;
 - (2) Approve the estimated costs of the project;
 - (3) Contain a legal description and map of the proposed district;
 - (4) Levy the CID sales tax, if any;
 - (5) Approve the maximum amount and method of assessment, if any; and
 - (6) Approve the method of financing.
 - ii) Such ordinance shall become effective upon publication once in the newspaper.
 - iii) The ordinance shall also be submitted for recording in the office of the register of deeds of the county in which the district is located.



Sedgwick County/City of Wichita Economic Development Guidelines



DEVELOPMENT AGREEMENT REQUIRED

Concurrently with, or prior to, the creation of a CID by the City Council, the City and the petitioner shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed CID. The Development Agreement will include the following:

- A. Site plan and elevation drawings or renderings of the CID project
- B. Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used
- C. Milestones and benchmarks for the performance of the Developer.
- D. Milestones shall include specific timelines for the construction and/or demolition within the District.
- E. Failure to reach established milestones can result in the elimination or reduction in the CID.
- F. Set forth the method and manner for disbursement of CID funds by the City, including the proceeds of bonds paid with CID funds.

The assignment of Development Agreement rights shall be limited to a collateral assignment of all rights to a lender with written notice to the City, or assignment of all rights to any third-party assignee with the written consent of the City or City Representative, at the discretion of the City. The assignment of rights shall not impair the City's right to determine the eligibility of CID costs nor require the City to subdivide any CID funds due to the developer.

In addition, the agreement shall provide for rapid repayment of the bonds and termination of the tax. City administrative fees and costs of issuance shall be paid from CID funds. For "pay-as-you-go" CID projects, the agreement will set forth the method and manner of disbursement of CID funds to the developers and shall include provisions for the termination of the CID taxes when developers have been fully reimbursed for eligible CID costs.

Financial Reporting – For projects that utilize CID bonds or for pay-as-you-go CIDs that use funds to pay ongoing operating expenses, the Developer will provide a certified annual accounting to the City on the amount and use of CID funds used to pay CID costs, by June 1 of the following year. City reserves the right to audit the use of CID financing at its discretion and expense.

Prioritization of Hard Costs – CID use will prioritize the funding of project hard costs. Hard costs include demolition, site improvements and actual construction of foundation, framing and equipment. CID funds may not be used to pay development fees or project management fees.

RELOCATION RESTRICTIONS

The relocation of existing businesses or tenants will not be permitted, unless the tenant will otherwise cease operations in the City or County. Projects will be evaluated to establish a reasonable distance radius around the development that restricts the relocation as well as a time period for which the restrictions will exist.

STANDARD DESIGN GUIDELINES GOVERN

CID will be used as a tool to encourage design and construction of a project at a level higher than required per City policies and ordinances. All property improvements commenced under an approved CID shall be subject to City regulations, standards, and policies, including, but not



Sedgwick County/City of Wichita Economic Development Guidelines



limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. Approval of CID for a project will not be considered approval of the aforementioned or other City regulations. In addition, project plans and renderings shall be reviewed by the City's staff and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

PUBLIC DISCLOSURE

The City shall establish and maintain a special website, linked to the City's official website, which lists all approved CIDs existing within the City and provides a description of the CID, including a map of its location, the amount of CID taxes and the intended use of CID funding.

In addition, developers will be responsible for signs being posted adjacent to the main entrance of every retail establishment within the CID where a special sales tax is charged. The signs must be at least 24 square inches in size and contain the words: "THIS PROJECT MADE POSSIBLE BY COMMUNITY IMPROVEMENT DISTRICT FINANCING" using type face of at least 18 points in size, and "FOR MORE INFORMATION GO TO WWW.WICHITA.GOV/CID" using type face of at least 12 points in size. Continuing failure to comply with this requirement will result in termination of CID reimbursement payments.

TERMINATION AND AMENDMENT OF CIDs

Subject to provisions contained in development agreements, the City shall take appropriate action to terminate or reduce CIDs when the project does not meet established performance measures such as milestones. Once all eligible project costs have been fully paid, including the principal and interest on any special obligation CID bonds or in the case of pay-as-you-go projects, the maximum CID funding amount provided in the petition the City will take the appropriate action to terminate the CID.

Should the Developer request an amendment to the CID or related development agreement the applicant shall pay an amendment fee of \$2,500. The City will require a \$5,000 deposit as well to pay City costs related to the amendment. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal legal counsel and certain third-party consultants.

WAIVER OF GUIDELINES

Should the City Council determine the terms of these guidelines are inappropriate to evaluate a particular CID application, it may, by majority vote, waive the binding effect of these guidelines ~~for in regard to~~ that application.



Sedgwick County/City of Wichita Economic Development Guidelines



TAX INCREMENT FINANCING

APPLICATION FEE

\$5,000 – Non-refundable

\$2,500 for Amendments to TIF Districts – Non-refundable

DEPOSIT FEE

The City shall require a \$10,000 deposit. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal/external legal counsel. This fee shall be replenished by the applicant if at any time the fund drops below \$5,000. The applicant shall replenish the fund to the \$10,000 level within 10 days of notice that it has dropped below \$5,000. Failure to replenish the deposit may result in City staff ceasing the processing of that project. Amendments to TIF districts require a \$2,500 deposit that will require replenishment if the funds drops below \$1,000.

PURPOSE OF GUIDELINES

Tax Increment Financing (“TIF”) provides an urban development strategy for financing redevelopment in communities throughout the country. TIF creates incentives for private investment in urban redevelopment by applying the incremental growth in tax revenues resulting from private investment to achieve the overall purposes of redevelopment. TIF does not increase tax rates within a TIF district.

The following general guidelines have been developed in order to provide guidance to staff, developers and other interested parties with an understanding of the City of Wichita’s guidelines and requirements for TIF. As applicable, these guidelines shall apply to Sales Tax And Revenue (“STAR”) financing as well as TIF.

BACKGROUND

The Kansas Legislature first authorized tax increment financing in 1976 through passage of K.S.A. 12-1770 *et seq.* The act allows for the issuance of special obligation or full faith and credit tax increment bonds, or pay-as-you-go tax increment financing, for qualified redevelopment projects.

Tax Increment Financing allows for the increase in tax revenues within the redevelopment district to pay for eligible redevelopment project costs. The “tax increment” is the increase in tax revenue resulting from the difference between aggregate assessed valuation of the property in the district after redevelopment compared with the value at the time of establishment of the redevelopment district (“Base Year”). The tax increment is used to pay for the eligible project costs while the revenues attributable to the Base Year valuation continue to go to all taxing districts. TIF revenues may be used to pay principal and interest on City bonds issued to finance eligible project costs or to reimburse developers for such costs on a “pay-as-you-go” basis.



Sedgwick County/City of Wichita Economic Development Guidelines



GENERAL GUIDELINES

While TIF is an important and useful tool for revitalizing economically challenged areas of the community, it is essential that it is used appropriately to accomplish the City's economic development goals and objectives. The fundamental principal which makes public financing viable is that it is designed to encourage development which would not otherwise occur. The City is therefore required to determine that the project would not occur as proposed "but for" the assistance provided through TIF. The City may require documentation similar in form and substance as private financing institutions when asked to consider the use of TIF for a project.

The City shall consider using TIF in cases that serve to accomplish the City's targeted goals for economic development as they may change over time. These goals include projects that would result in redevelopment of underutilized areas, increase in the tax base, remove blight, revitalize targeted neighborhood areas, retain viability in Downtown and retain and expand businesses. The City may place special emphasis/priority on the use of TIF for specific categories of projects that serve to stimulate, revitalize the Wichita economy, redevelop identified properties or enhance the quality of life in the City of Wichita.

INCENTIVE OBJECTIVES

The City will use tax increment financing to accomplish these *major* objectives:

- A. Eliminate blighting influences throughout the city and/or encourage redevelopment of underutilized commercial and industrial areas in the city that result in high quality redevelopment and private investment.
- B. Increase the city's property tax base by providing high quality development.
- C. Encourage additional private development surrounding the redevelopment.
- D. Support redevelopment efforts that enhance and preserve unique urban features and amenities, including downtown, the river corridor and historic structures.
- E. To facilitate the development process and to achieve development on sites which could not otherwise be developed to its highest potential without the use of TIF.
- F. To support the implementation of City Council approved neighborhood plans.

ELIGIBLE AREAS

The City will consider the establishment of redevelopment districts pursuant to TIF statutes for areas meeting one or more of the following criteria and where the conservation, development or redevelopment of such area is found to be necessary to promote the general and economic welfare of the City:

- A. *Blighted Areas*: To qualify for establishment of a redevelopment district under this criteria, the area must meet the conditions set forth in K.S.A. 12-1770a(c), except that areas located in a 100-year flood plain will only be considered if all property in the district not needed for drainage improvements is to be removed from the flood plain by the redevelopment project.
- B. *Conservation Areas*: Areas in eminent danger of becoming blighted in which a majority of the existing structures are over 35 years old may be considered for establishment of a redevelopment district, as set forth in K.S.A. 12-1770a(d).



Sedgwick County/City of Wichita Economic Development Guidelines



- C. *Enterprise Zones*: Areas within a city that were designated as an enterprise zone prior to July 1, 1992 may be considered for establishment of a redevelopment district, as set forth in K.S.A. 12-1770a(h). A map showing the location of pre-1992 Enterprise Zones in Wichita is available for viewing in the Office of Economic Development.
- D. *Opportunity Zones*: Established in the Tax Cuts and Jobs Act of 2017, Opportunity Zones provide tax incentives for investment in designated census tracts supporting new investments and redevelopments in the community.
- E. *Minimum Size*: Generally, a redevelopment district should be large enough to make a visible difference to the character of the greater area in which it is located, once it is redeveloped. As a guideline, outside of the downtown area, redevelopment districts should be at least five (5) acres in size and at least two (2) acres within downtown.

ELIGIBLE TIF COSTS

- A. The City of Wichita will use Tax Increment Financing only when a clearly identified city development objective is served and only to the degree necessary to accomplish that development objective.
- B. Projects intending to use tax increment financing must provide a public purpose statement to identify the public benefit served by the development.
- C. Tax Increment Financing will only be used in cases where the City has the financial capacity to provide the needed public assistance, the City Council deems it fiscally prudent to provide such assistance and the developer can clearly demonstrate that the development will be able to meet its financial and public purpose commitments.
- D. Alternatives, such as “pay-as-you-go” financing and reimbursing front-end public redevelopment costs with tax increment revenues, are preferable to bond financing and are to be considered and used when appropriate.
- E. Full faith and credit TIF bonds will be used only when Special Obligation bonds are not financially feasible.
- F. Only those public improvements and public redevelopment costs directly associated with the proposed development plan or project should be financed through tax increment.
- G. Tax increment revenues shall be used primarily for public infrastructure and public improvements. Eligible expenses are defined pursuant to K.S.A. 12-1770a(o). The City approved uses include:
 - 1. Property acquisition
 - 2. relocation costs;
 - 3. site preparation, including demolition and environmental soil remediation;
 - 4. sanitary and storm sewers and lift stations;
 - 5. utility relocations and extensions;
 - 6. landscaping; lighting; paving, including parking lots;
 - 7. public streets;
 - 8. drainage conduits, channels, levees and river walk canal facilities;
 - 9. plazas and arcades;
 - 10. parking facilities, including multi-level parking structures; and
 - 11. costs associated with above uses, such as design and financing.

Excluded uses are costs related to building construction, except for multi-level public parking structures and other uses specifically authorized by statute.



Sedgwick County/City of Wichita Economic Development Guidelines



PROJECT REQUIREMENTS

- A. Tax increment financing will only be used as a final effort for funding. Developer must prove all other financing efforts have been exhausted.
- B. Projects should provide the highest possible private to public financial investment ratio. For TIF-only projects the ratio shall be 3 to 1, otherwise it shall be 2 to 1.
- C. TIF projects and development agreements will be prepared in a way to not place additional ongoing financial burden on the City, including operating costs of TIF funded improvements.
- D. The developer must provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, personal guaranties, etc.
- E. Developer shall adequately demonstrate, to the City's satisfaction, an ability to complete the proposed project based on past development experience, general reputation, and credit history, among other factors including the size and scope of the proposed project. City may request, at the developer's expense, a third-party analysis of the developer's capacity.
- F. An appropriate portion of the TIF proceeds should be used to pay for additional municipal facilities or public infrastructure beneficial to the TIF project. If the Developer requests infrastructure improvements benefitting the project, TIF funds will be prioritized for said improvements. The adequate proportion will be negotiated per project.
- G. Construction will commence within one year of City Council approval or development agreement will be void, unless extended by the City Council.
- H. Any developer controlled land will have deed restrictions placed to ensure use and disposition of property cannot change without approval from the City.

PROJECT QUALIFICATIONS

All TIF projects considered by the City of Wichita must meet all of the following qualifications:

- A. Eligibility under state law;
- B. Project shall result in a minimum value increase of 3 times the Base Year assessed value;
- C. The developer shall demonstrate that the project is not financially feasible without the use of TIF;
- D. The project must be consistent with the City's Comprehensive Plan, Land Use Plan and Zoning Ordinances;
- E. The project shall serve a majority of the public purposes identified in Incentive Objectives, above.

ECONOMIC ANALYSIS AND FINANCIAL REQUIREMENTS

A. Gap Analysis

All TIF projects will be analyzed to determine the need for financial assistance. TIF projects financed on a "pay-as-you-go" will be reviewed to determine the amount and level of assistance needed.

Applicants will be required to provide City Staff with pro forma cash flow analysis and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide



Sedgwick County/City of Wichita Economic Development Guidelines



the applicant a reasonable market rate of return on investment based on current market capitalization rates identified by a qualified third party.

TIF projects financed with bonds will not be approved without a financial analysis that demonstrates the project would not otherwise be possible without the use of TIF bond financing.

B. Financial Feasibility Analysis

A financial feasibility analysis will be conducted by City Staff to determine the capacity and need for TIF financing.

C. Return On Public Investment

Return on Public Investment – Project's return on public investment will be reviewed by the Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model.

D. Equity Contribution

TIF shall not be used to supplant cash equity. Developer cash equity contribution shall be at least 15%. Tax credits will be considered equity but a minimum of 5% equity must be developer cash. Deferred developer fees will not be considered equity.

E. Developer (Personal) Guarantee

1. Developer will be required to personally guarantee 100% of the tax increment required to meet annual debt service payments on City bonds issued to finance TIF project costs. Letters of credit, bond insurance, pledged collateral or other acceptable form of credit enhancement will be required as additional security for the obligation.
2. Developer will agree to not protest the value assessed by County Appraiser's Office during the life of the Project, unless actual values exceed projected values used in TIF analysis by at least 150%.

F. Market Study

Developer shall be able to demonstrate a market demand for a proposed project. TIF shall not be used to support purely speculative projects. City may require a third-party market study when appropriate.

G. Term

The maximum term for a TIF project, per statute, is 20 years.

H. Bond Issuance

In cases in which a bond issuance is requested, the City's Staff will work with the developer to calculate how much revenue will be raised from the TIF district and the principal amount of bonds that can be issued based on the tax revenue stream and a 1.3 debt service coverage ratio. Proceeds from the sale of the bonds will be used to pay for eligible improvements and costs pursuant to the Statute and development agreement.

I. Background Check



Sedgwick County/City of Wichita Economic Development Guidelines



Developer will pay a \$250 City administrative fee and external vendor vetting on all parties requesting Tax Increment Financing. Third-party fees will be determined by the number of individuals and their related operating entities. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Information generated by the background check will be treated as confidential information to the extent allowed by the KORA.

PROCEDURES FOR TIF APPROVAL AND FUNDING

A. Project Application

A developer interested in the use of Tax Increment Financing will prepare and submit a Project Application Packet to the Office of Economic Development, along with a \$5,000 application fee and \$10,000 deposit fee. An application will contain the following information:

1. Conceptual Project Plan – A preliminary plan that outlines the scope of the project including:
 - a. A description of the proposed project, including a public purpose.
 - b. Market study of the area that demonstrates the need and feasibility of the project.
 - c. Listing of project milestones.
 - d. A financial plan with costs, proposed funding sources, and evidence of a financing gap
2. Land Use Plan – Information regarding the proposed uses or changes to the land including:
 - a. Preliminary site plan of the proposed project and/or improvements
 - b. Proposed changes to current land use and infrastructure.
 - c. Any known environmental concerns.
 - d. Visual depictions of proposed project renderings or elevations.
3. Project Team – Provide names, affiliations and roles & responsibilities of the project team.
4. Supporting documentation – Other information that will provide the City with a better understanding of the proposed redevelopment. This information will assist the City in evaluating the project and understanding the commitment of the developer.

B. City Fees

The City shall be paid a non-refundable application fee of \$5,000 as well as a \$10,000 deposit fee. The \$10,000 deposit fee shall be applied toward staff time, expenses for any mailing or publications, internal or external legal counsel. This fee shall be replenished by the applicant if at any time the fund drops below \$5,000. The applicant shall replenish the fund to the \$10,000 level within 30 days of notice that it has dropped below \$5,000.

C. Department Review

The project application will be reviewed by City Staff for eligible costs and participation consideration.

D. TIF District Creation Process

As prescribed by state law, the TIF district is established by city ordinance. The City Council will adopt a resolution to hold a public hearing for consideration of establishment of the



Sedgwick County/City of Wichita Economic Development Guidelines



redevelopment district. Upon conclusion of the public hearing the City Council will vote to determine if a redevelopment district should be established.

Once established, one or more redevelopment projects may be undertaken within the district, either consecutively or concurrently.

E. Sedgwick County and School District Approval

The governing bodies of the county and school district have 30 days in which to make a determination as to whether the TIF will create an adverse impact and veto the establishment of the district. Sedgwick County has established a formal policy regarding review and approval/denial of a TIF redevelopment district.

Click here to view the [County TIF Policy](#).

REQUIREMENTS TO APPROVE TIF PROJECT

A. TIF Project Approval Process Overview

Each application for TIF assistance received by the City shall be diligently reviewed for the purpose of determining both (i) whether the proposed use of TIF meets the purpose, objectives and requirements of the City's TIF Guidelines, and (ii) the financial and experiential capacity of the developer.

Before TIF funds may be expended on a project, the governing body of the city must adopt a project plan setting out the details of the project and its financial feasibility.

Project plans are first approved by the planning commission and then adopted by city ordinance, passed by 2/3 majority vote following a public hearing.

B. Project Plan

In those instances where City staff believes the use of TIF assistance is appropriate, it shall then prepare a project plan with the developer for adoption by the City. The project plan per K.S.A 12-1772 (a)(1)(2), will contain:

1. Feasibility Study Summary, which includes:
 - i) Whether a redevelopment project's benefits in terms of tax increment revenue and other available revenues are expected to exceed or be sufficient to pay for the redevelopment costs; and
 - ii) The effect, if any, the redevelopment project costs will have on any outstanding special obligation bonds per K.S.A. 12-1774 (a)(1)(D); and
 - iii) A statement of how the taxes obtained from the project will contribute significantly to the economic development of the area.
2. A reference to the district plan per under K.S.A. 12-1771.
3. A description and map of the redevelopment area.
4. A relocation assistance plan if required.
5. A detailed description of the buildings and facilities proposed to be constructed or improved.

C. Development Agreement



Sedgwick County/City of Wichita Economic Development Guidelines



The Development Agreement will outline the general obligations of the City and Developer in regards to the TIF project and identify any additional requirements specific to the project. Without limitation, all development agreements shall include:

1. An expiration term based on the size and scope of the project, which may only be extended by City Council action.
2. Development agreement will be void if construction does not commence within one year of City Council approval unless extended by the City Council.
 - i. Due to the limited term of TIF financing, any delay of construction longer than one year will affect the cash flow necessary for the success of a project.
3. Developer will provide a “shortfall guarantee” that obligates the developer to make up the difference any year that TIF revenue is not sufficient to pay bond obligations.
4. Developer will agree to not protest the value assessed by County Appraisers during the life of the Project, unless actual values exceed projected values used in TIF analysis by at least 150%.
5. City’s obligations are conditioned on final approval of use of TIF and other City funding.
6. Conditions precedent that shall identify all actions that must occur prior to the City obligating resources to the project. The Conditions precedent shall include:
 - i. Satisfactory evidence to the City that Developer has secured the loan commitment and any other sources of financing,
 - ii. City’s satisfaction with the costs associated with the project in accordance with the City’s plans, drawings and specifications, as needed,
 - iii. All approvals from the Historic Preservation Board and all similar approvals needed for development of the Project have been obtained in writing.
7. Developer will provide to County Appraiser, on an annual basis, an economic performance report including the Net Operating Income no later than March 1 of each year.

D. Periodic Reporting

1. For the duration of the construction and development period, a progress report shall be provided by the Developer, on a regular basis as determined by the size and scope of project, giving a status on the project in the TIF Plan and include:
2. Existing development to date,
 - a. Development projected to be built within the reporting period, and
 - b. Proposed revisions to the Development Plan, if any.
3. Economic performance report to the County Appraiser on NOI no later than March 1 of each year for the previous calendar year.
4. The developer shall file a report annually for two years after the date the benefit is received or until all goals set forth in the development agreement have been met, whichever is later. Reports shall be filed with the City of Wichita no later than March 1 of each year for the previous calendar year.

E. City Council Adoption

Before TIF funds can be expended on a project, the governing body of the city must adopt a project plan setting out the details of the project and its financial feasibility. Project plans are first approved by the planning commission and then adopted by city ordinance, passed by 2/3 majority vote following a public hearing.

F. Amendment of TIF



Sedgwick County/City of Wichita Economic Development Guidelines



For any amendments to the TIF Project Plan or related development agreement the Developer shall pay an amendment fee of \$2,500. The City will require a \$5,000 deposit as well to pay City costs related to the amendment. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal legal counsel and certain third-party consultants.



Sedgwick County/City of Wichita Economic Development Guidelines



I. WAIVER OF GUIDELINES

Should the City Council determine the terms of these guidelines are inappropriate to evaluate a particular TIF application, it may, by majority vote, waive the binding effect of these guidelines ~~for in regard to~~ that application.



Sedgwick County/City of Wichita Economic Development Guidelines



SALES TAX AND REVENUE (STAR) BOND FINANCING

APPLICATION FEE

\$25,000 – Non-refundable

DEPOSIT

The City shall require a \$10,000 deposit. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal/external legal counsel, bond counsel. This fee shall be replenished by the applicant if at any time the fund drops below \$5,000. The applicant shall replenish the fund to the \$10,000 level within 10 days of notice that it has dropped below \$5,000. Failure to replenish the deposit may result in City staff ceasing the processing of that project.

PURPOSE OF GUIDELINES

Sales Tax and Revenue financing (“STAR”) bonds -provides a strategy for financing development of major commercial entertainment and tourism areas within the City. STAR creates incentives for private investment by applying the incremental growth in sales tax revenues resulting from private investment to achieve the overall purposes of development. The program-STAR does not increase sales tax rates within a STAR bond district.

The following general guidelines have been developed in order to provide guidance to staff, developers and other interested parties with an understanding of the City of Wichita’s guidelines and requirements for STAR. The ultimate goal for STAR bond projects is to increase tourism and sales tax generation for the region and State. The Kansas Department of Commerce has the final input and approval for any STAR Bond districts and projects.

BACKGROUND

STAR bond financing is an economic development tool authorized by the State of Kansas and requiring local participation. STAR allows for the increase in sales tax revenues within the district to pay for eligible project costs. The “tax increment” is the increase in sales tax revenue resulting from the difference between sales tax collection in the year a STAR bond district is established and the increased taxes collected following development of the commercial and tourism attraction. The tax increment is used to pay for the eligible project costs while the revenues attributable to the Base Year revenue continue to go to all taxing districts. All or a portion of the increased state sales and use tax revenues also may be used to repay the bonds, which typically have a 20-year repayment period.

GENERAL GUIDELINES

While STAR is an important and useful tool for creating a more vibrant and attractive City, it is essential that it is used appropriately to accomplish the State and City’s economic development goals and objectives. The fundamental principal which makes public financing viable is that it is designed to encourage development which would not otherwise occur. The City may require

Adopted 10.06.20, Updated 12.14.21 and 04.12.22



Sedgwick County/City of Wichita Economic Development Guidelines



documentation similar in form and substance as private financing institutions when asked to consider the use of STAR for a project.

INCENTIVE OBJECTIVES

The City will support STAR financing to accomplish these *major* objectives:

- A. Encourage the development of facilities that make Wichita a desirable place to live but additionally create a development that generates positive tourism and visitation opportunities.
- B. Increase the city's property tax base by providing high quality development.
- C. Encourage additional private development surrounding the redevelopment.
- D. Support redevelopment efforts that enhance and preserve unique urban features and amenities, including downtown, the river corridor and historic structures.
- E. To facilitate the development process and to achieve development on sites which could not otherwise be developed to its highest potential without the use of STAR.
- F. To support the implementation of City Council approved plans.

ELIGIBLE STAR COSTS

- A. The City of Wichita will use STAR Financing only when a clearly identified city development objective is served and only to the degree necessary to accomplish that development objective.
- B. Projects intending to use STAR financing must provide a public purpose statement to identify the public benefit served by the development.
- C. Only those public improvements and public development costs directly associated with the proposed commercial entertainment and tourism portion will be paid for with STAR bonds. Infrastructure costs related to the remainder of the development will be paid for privately or with Special Assessment financing.
- D. STAR revenues shall be used primarily for infrastructure and public improvements and only for expenses incurred after City and State approval. Eligible expenses are defined pursuant to K.S.A. 12-17, 160. The City approved uses include:
 - a. relocation costs;
 - b. site preparation;
 - c. sanitary and storm sewers and lift stations;
 - d. utility relocations and extensions;
 - e. landscaping; lighting; paving, including parking lots;
 - f. streets;
 - g. drainage conduits, channels, levees and river walk canal facilities;
 - h. parking facilities, including multi-level parking structures; and
 - i. construction of a multi-sport athletic facilities;
 - j. costs associated with above uses, such as design and financing.
- E. Property acquisition may be a permitted use of STAR funds.

PROJECT REQUIREMENTS

- A. A project with at least a \$50 million capital investment and \$50 million in projected gross annual sales revenues;

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



- B. A project located outside of a metropolitan statistical area that has been found by the Secretary of Commerce to be in an eligible area under Tax Increment Financing law and of regional or statewide importance;
- C. A major commercial entertainment and tourism area as determined by the Secretary of Commerce (Secretary);
- D. Auto racetrack facilities, multi-sport athletic complexes, riverwalk canal facilities, historic theaters, the Manhattan Discovery Center, the Wyandotte County Schlitterbahn Project, museum facilities, or a major motorsports complex in Shawnee County;
- E. A project involving buildings 65-years-old or older and include contiguous lots that are vacant or condemned
- F. Projects should provide the highest possible private to public financial investment ratio (minimum 2 to 1).
- G. STAR projects and development agreements will be prepared in a way to not place additional ongoing financial burden on the City, including operating costs of STAR funded improvements.
- H. The developer must provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, personal guaranties, etc.
- I. Developer shall adequately demonstrate, to the City's satisfaction, an ability to complete the proposed project based on past development experience, general reputation, and credit history, among other factors including the size and scope of the proposed project. City may request, at the developer's expense, a third-party analysis of the developer's capacity.
- J. Whenever possible, an appropriate portion of the STAR bond proceeds should be used to pay for additional municipal facilities or infrastructure.
- K. Construction will commence within one year of City Council approval or development agreement will be void, unless extended by the City Council.

ECONOMIC ANALYSIS AND FINANCIAL REQUIREMENTS

- A. Financial Feasibility Analysis: All applicants will be required to provide City Staff with pro forma cash flow analysis and sources and uses of funds. A financial feasibility analysis will be conducted by City Staff to determine the capacity and need for STAR financing.
- B. Return On Public Investment: The ratio of public benefits to public costs should be 1.0 to 1.0 as determined by a third-party analysis approved by the City.
- C. Equity Contribution: STAR shall not be used to supplant cash equity. Developer cash equity contribution shall be at least 15%. Deferred developer fees will not be considered equity.
- D. Market Study: Developer shall be able to demonstrate a market demand for a proposed project. STAR shall not be used to support purely speculative projects. City may require a third-party market study when appropriate.
- E. Background Check: Developer will pay a \$250 City administrative fee and external vendor vetting fee on all parties requesting STAR Bonds. Third-party fees will be determined by the number of individuals and their related operating entities. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Information generated by the background check will be treated as confidential information to the extent allowed by the KORA.



Sedgwick County/City of Wichita Economic Development Guidelines



PROCEDURES FOR STAR APPROVAL AND FUNDING

A. Project Application

A developer interested in the use of STAR Financing will prepare and submit a Project Application Packet to the Office of Economic Development, along with a \$25,000 application fee. An application will contain the following information:

1. Conceptual Project Plan – A preliminary plan that outlines the scope of the project including:
 - i) A description of the proposed project, including a public purpose.
 - ii) Market study of the area that demonstrates the need and feasibility of the project.
 - iii) Listing of project milestones.
 - iv) A financial plan with costs, proposed funding sources, and evidence of a financing gap
2. Land Use Plan – Information regarding the proposed uses or changes to the land including:
 - i) Preliminary site plan of the proposed project and/or improvements
 - ii) Proposed changes to current land use and infrastructure.
 - iii) Any known environmental concerns.
 - iv) Visual depictions of proposed project renderings or elevations.
3. Project Team – Provide names, affiliations and roles & responsibilities of the project team.
4. Supporting documentation – Other information that will provide the City with a better understanding of the proposed redevelopment. This information will assist the City in evaluating the project and understanding the commitment of the developer.

B. Department Review

The project application will be reviewed by City Staff for eligible costs and participation consideration.

C. STAR Bond District Creation Process

As prescribed by state law, the STAR district is established by city ordinance. The City Council will adopt a resolution to hold a public hearing for consideration of establishment of the STAR district. Upon conclusion of the public hearing the City Council will vote to determine if a STAR district should be established. STAR Bond districts and projects require approval from the Kansas Department of Commerce.

Once established, one or more STAR projects may be undertaken within the district, either consecutively or concurrently.

REQUIREMENTS TO APPROVE STAR PROJECT

A. STAR Project Approval Process Overview

Each application for STAR Bond financing received by the City shall be diligently reviewed for the purpose of determining both (i) whether the proposed use of STAR meets the purpose, objectives and requirements of the City's STAR Guidelines and underwriting guidelines, and (ii) the financial and experiential capacity of the developer.



Sedgwick County/City of Wichita Economic Development Guidelines



Before STAR funds may be expended on a project, the governing body of the city must adopt a project plan setting out the details of the project and its financial feasibility.

Project plans are first approved by the planning commission; then adopted by city ordinance, passed by 2/3 majority vote following a public hearing; and finally approved by the Kansas Department of Commerce.

B. Development Agreement

The Development Agreement will outline the general obligations of the City and Developer in regards to the STAR project and identify any additional requirements specific to the project. Without limitation, all development agreements shall include:

1. An expiration term based on the size and scope of the project, which may only be extended by City Council action.
2. Development agreement will be void if construction does not commence within the timeframe defined in the Development Agreement.
 - a. Due to the limited term of STAR financing, any delay of construction longer than one year will affect the cash flow necessary for the success of a project.
3. City's obligations are conditioned on final approval of use of STAR and other City funding.
4. Conditions precedent that shall identify all actions that must occur prior to the City obligating resources to the project. The Conditions precedent shall include:
 - a. Satisfactory evidence to the City that Developer has secured the loan commitment and any other sources of financing,
 - b. City's satisfaction with the costs associated with the project in accordance with the City's plans, drawings and specifications, as needed,

C. Periodic Reporting

1. For the duration of the construction and development period, a progress report shall be provided by the Developer, on a regular basis as determined by the size and scope of project, giving a status on the project in the STAR Plan and include:
 - a. Existing development to date,
 - b. Development projected to be built within the reporting period, and
 - c. Proposed revisions to the Development Plan, if any.
2. Semi-annual report of the current and proposed retailers to locate within the STAR Bond District.
3. The developer shall file a report annually for two years after the date the benefit is received or until all goals set forth in the development agreement have been met, whichever is later. Reports shall be filed with the City of Wichita no later than March 1 of each year for the previous calendar year.

D. Amendment of STAR

For any amendments to the STAR Project Plan or related development agreement the Developer shall pay an amendment fee of \$7,500. The City will require a \$7,500 deposit as well to pay City costs related to the amendment. The deposit shall be applied toward staff time, expenses for any mailing or publications, internal legal counsel



Sedgwick County/City of Wichita Economic Development Guidelines



RELOCATION RESTRICTION

The relocation of existing businesses or tenants will not be permitted, unless the tenant will otherwise cease operations in the City or County. Projects will be evaluated to establish a reasonable distance radius around the development that restricts the relocation as well as a time period for which the restrictions will exist.

II. WAIVER OF GUIDELINES

Should the City Council determine the terms of these guidelines are inappropriate to evaluate a particular STAR application, it may, by majority vote, waive the binding effect of these guidelines in regard to that application.



Sedgwick County/City of Wichita Economic Development Guidelines



FAÇADE IMPROVEMENT PROGRAM

APPLICATION FEE

\$1,000 – Non-refundable

Summary

The Facade Improvement Program is designed to enhance the visual aesthetics of Wichita's downtown and revitalization areas and provide an incentive for businesses to invest in redevelopment of their property. Low cost loan financing combined with a forgiveness provision for a portion of the loan (for non-high-rise buildings) makes an attractive financing package for owners or tenants seeking to renovate or restore building facades. Borrowers under this program are expected to match the City's financing package with other funding for the overall redevelopment project. The minimum façade improvement project size is \$50,000.

What is the Facade Improvement Program?

The program provides low-cost financing (based on market conditions) over a fifteen-year period to renovate or restore a visible facade. For non high-rise buildings, the City assistance may include a grant of up to 25% of the project cost, subject to recapture (as liquidated damages) if the owner fails to maintain the façade during the term of the façade financing. The maximum City of Wichita assistance (grant) is \$10,000 (or 25% of the total project cost, whichever is lower) for one facade. Up to \$30,000 (or 25% of total project costs, whichever is lower) is available for a corner building with two visible facades. City grant funds are limited and when the grant fund balance reaches \$0, the grant component will no longer be available. The balance of the City's financing package (up to 75% of the facade improvement costs) will be made available through a fifteen-year special assessment against the real property. The property owner must sign the special assessment petition and the facade easement conveying the facade to the City of Wichita during the term of the special assessment financing. When the loan is repaid, the facade easement will be released.

High-rise building requirements

- The high-rise facility must be more than three stories in height.
- Grants will not be permitted for high-rise buildings or façade projects over \$500,000.
- Assistance beyond two sides of the building may be approved if circumstances warrant.

Who can apply for financing?

Any building owner or tenant with lease authority and approval of the owner may apply for façade funding. The building must be located within approved areas (see map). Owner or tenants cannot be delinquent on any current City charges, taxes or assessments or have defaulted on any previous City assistance. Owner must provide evidence of additional private investment in the redevelopment of the property, equal to or greater than the amount of City façade funding. Private investment may include the cost of consolidating land ownership.

What is the target area?

Buildings with frontages on arterial streets in select commercial corridors (as identified in the attached map), Redevelopment Areas and adopted neighborhood plan areas are also eligible.

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



Adopted neighborhood plans are available on the [Wichita/Sedgwick County planning site](#). Those neighborhoods include but are not limited to:

- Arena Neighborhood Redevelopment Plan
- Center City Neighborhood Plan (C.O.R.E.)
- Delano Neighborhood Revitalization Plan
- 21st St. North Corridor Redevelopment (International Marketplace)
- South Central Neighborhood Plan (South Broadway area)
- Historic Midtown Neighborhood Plan
- McAdams Neighborhood Revitalization Plan
- Central Northeast Area Plan
- Douglas Design District
- Downtown Self-Supporting Municipal Improvement District (SSMID)
- Opportunity Zones
- Places 4 People Nodes

The City Council will also have the option for a case-by-case review of individual properties located outside of the target areas.

What types of improvements are eligible? (subject to City approval)

Masonry repairs and tuckpointing
Repair/replace/preserve historically significant architectural details
Storefront reconstruction
Cornice repair
Power washing (subject to approval by historic preservation officer)
Exterior painting and stucco
Awnings and canopies
Window and door repair or replacement
Permanent exterior signage integrated into the storefront design
Exterior lighting
Repair/replacement of gutters and downspouts
Facade building code items
Visible roof repairs in conjunction with structural improvements
Public art attached to the building (such as murals)
Utility/trash enclosures attached to the building
Sidewalks
Decorative fencing attached to the building
Decking and stairs attached to the building
Architectural, engineering or design fees
Conversion of use on a case-by-case basis

What items are not eligible?

Landscaping
Non-visible roofing
Attached, hanging or projecting signs unrelated to the architecture of the building
Mechanical equipment enclosures (non-visible)
Parking lots
Billboards

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



Interior renovation
Temporary, portable or non-permanent improvements (useful life less than term of façade loan)
Non-visible or side façade (unless on an arterial street) and rear facades
New construction
Property acquisition
Expansion of building area
Working capital
Developer fees
Refinance of existing debt
Improvements (including design work) in progress or completed prior to loan/grant approval
Loans for speculative purposes
Single family residential properties

These lists are not intended to be exhaustive. All improvements are subject to City Council approval.

Are there any design guidelines?

All Façade Improvement Program projects must be reviewed and approved by representatives of the Historic Preservation Board and the City Design Council prior to approval of the loan or issuance of a building permit. Where historic structures are involved, review by the Historic Preservation Board is required prior to start of construction. This includes properties located within a historic district and any property within 500 feet of a listed historic property (environs). All construction must comply with City code. All construction must conform to the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG).

What other requirements are there?

- A. All work must be accomplished using private contractors through competitive bidding from at least three qualified companies pre-approved by the City of Wichita.
- B. Requires the use of professional design assistance (including providing elevations and renderings).
- C. Project must result in visible improvement of overall façade (e.g. not just sign replacement). Borrower agrees to maintain the façade for the term of the façade loan.
- D. Façade loans will be offered on a one-time basis unless a phased project receives prior City Council approval.
- E. Owner shall convey a façade easement to the City of Wichita before the start of construction, which shall run for the full term of the façade loan. Ownership verification is required.
- F. All approved projects must be completed within six months (180 days) of approval of the application, unless approved for phasing. A construction schedule is required for high-rise projects and façade loans over \$500,000.
- G. Developer will pay a \$250 City administrative fee and external vendor vetting fee on all parties requesting Façade Improvement Loans. Third-party fees will be determined by the number of individuals and their related operating entities.
- H. Owner shall provide financial information that substantiates the need for the City's façade loan in order to complete the redevelopment project, including the overall sources and uses of funds and pro forma cash flow analysis that shows a reasonable return on owner's investment.
- I. The overall redevelopment project must include significant private investment (other than the façade loan) in an amount equal to or greater than the amount financed by the Façade

Adopted 10.06.20, Updated 12.14.21 [and 04.12.22](#)



Sedgwick County/City of Wichita Economic Development Guidelines



Improvement Program, proof of which must be provided prior to disbursement of any façade loan proceeds.

- J. Special assessment financing of façade loans shall be for a 15-year term unless 20-year financing is recommended by the Development Coordinating Committee, based on financial need.
- K. Special assessment financing for façade loans over \$500,000 requires the use of taxable bonds, whose interest rate will be higher than tax-exempt bonds. Use of tax-exempt bonds for façade loans less than \$500,000 depends on the City's legal capacity to issue tax-exempt bonds for non-exempt projects.
- L. Façade improvements will be financed up-front by the Developer and reimbursed when the façade project is complete. Standard payment request forms, AIA recommended, will be used for all reimbursement, including detailed invoices from project participants, including contractors and consultants, with sufficient documentation to show expenses were actually incurred.
- M. A current independent appraisal that estimates both "as-is" and "as-built" property values is required for high-rise buildings and façade projects over \$500,000. A bank appraisal associated with private investment may be used. Cost of a separate appraisal may be financed with the façade loan.
- N. Projects will be evaluated for the level of risk to the City. The loan portion of the façade will be limited to no more than 25% of the projected value of the project once complete. When necessary, the City will seek additional guarantees for the façade loan following staff and/or third-party analysis.

Where do I apply? Applications are available in the Office of Economic Development, 13th floor, City Hall, 455 North Main. The program coordinator is Mark Elder, Office of Economic Development, (316) 268- 4627, and melder@wichita.gov. Application forms are also available online at the City of Wichita web site: www.wichita.gov on the Economic Development webpage.

What is the process?

- Step 1:** Meet with appropriate City staff to review the preliminary design, expected timelines and next steps. This may include the Department of Public Works, Office of Central Inspection and the Metropolitan Area Planning Department.
- Step 2:** Finalize the renovation plans. This step should include consultation with an architect or engineer to discuss improvements and alterations to the building exterior.
- Step 3:** Obtain a complete preliminary cost estimate from a licensed contractor which covers the work to be accomplished. Cost estimate shall be a not-to-exceed amount and may include a 10% contingency. City will add a 2% Engineering Administrative Fee and financing costs, including construction interest and costs of bond issuance. For façade loans over \$500,000, a debt service reserve equal to one year's debt service will be added to the loan amount (reserve will be held in trust by the City and used to pay final year's special assessment payment).
- Step 4:** Submit a completed Facade Improvement Program application form to: Mark Elder, Office Economic Development, 13th Floor, City Hall, 455 North Main, Wichita, Kansas 67202. Include a completed Facade Easement form with application.

Adopted 10.06.20, Updated 12.14.21 and 04.12.22



Sedgwick County/City of Wichita Economic Development Guidelines



-
- Step 5:** City formally reviews the application and performs background checks on applicant(s). Approvals are required by representatives of the Public Works Department, Office of Economic Development, City Design Council, Department of Finance and Historic Preservation Board (as appropriate).
- Step 6:** Obtain approval by City Council by means of a maximum assessment ordinance.
- Step 7:** City notifies the applicant of approval and any pertinent requirements. The applicant has six months (180 days) from the date of application approval to complete the project. If there is no activity during this time, the application approval will expire and any City funding will be released for other applications.
- Step 8:** Initiate competitive bidding for facade work. Obtain building permit and planning permits (as applicable). Submit copies of permit and competitive bidding to Mark Elder in Economic Development. Applicant commences improvements.
- Step 10:** Applicant submits proof of final expenses to Mark Elder in Economic Development. Economic Development processes applicant final reimbursement and issues a Statement of Final Project Cost.
- Step 11:** Special Assessment payments will appear on the Sedgwick County Property Tax Statements starting with the next tax statement (following year).

Are there companion programs that I may also be eligible for?

Applicants may wish to review the following programs:

State and Federal

Rehabilitation Tax Credits Kansas State Historical Society
6425 SW Sixth Avenue
Topeka, Kansas 66615-1099
(785) 272-8681 ext. 213
Kristen Johnston
kjohnston@kshs.org

Building Permit Fee Waiver Metropolitan Area Building and Construction Department
271 W. 3rd St. N. Suite 101
Wichita, KS 67202
(316) 660-1840
Kortney Capello
kortney.capello@sedgwick.gov

Historic Revolving Loan Preservation Office
Program 10th Floor City Hall
~~455 North Main~~ 271 W. 3rd St. N. Suite 201
Wichita, Kansas 67202
(316) 268-4392
~~Christina Rieth~~ Kathy Morgan, ~~Associate~~ Senior Planner-Historic
Preservation
kmorgan@wichita.gov

Adopted 10.06.20, Updated 12.14.21 and 04.12.22



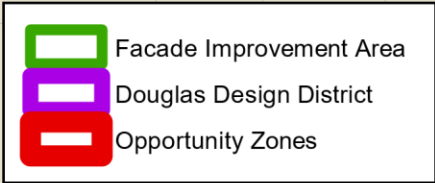
Sedgwick County/City of Wichita Economic Development Guidelines




Asbestos/Lead-based Paint Mitigation Program

Economic Development Office
13th Floor City Hall
455 North Main
Wichita, Kansas 67202
(316) 268-4524
Mark Elder, Development Analyst
melder@wichita.gov

SETOGWICK COUNTY/CITY OF WICHITA Economic Development

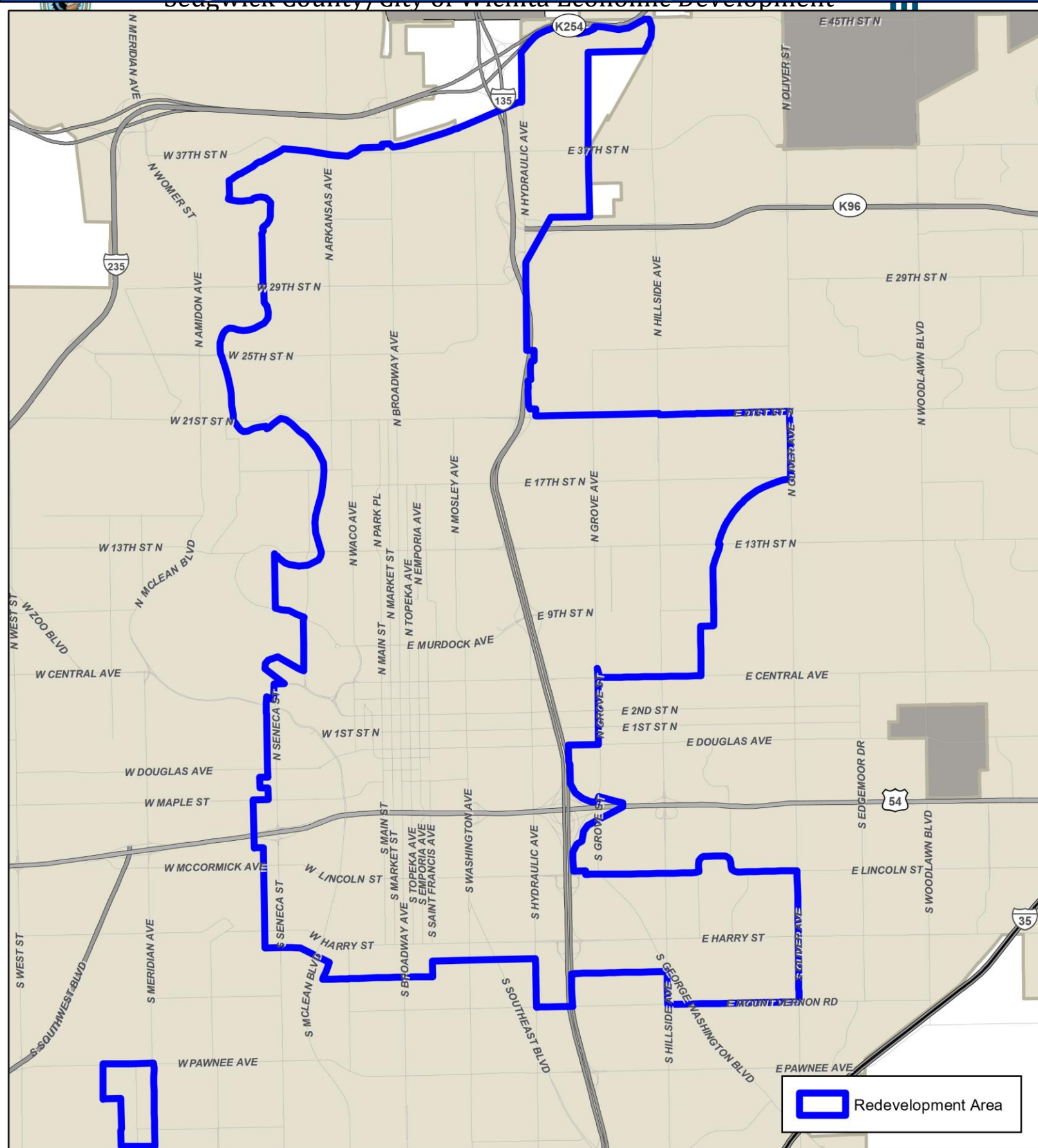


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City of Wichita Redevelopment Area



It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information, or data displayed. Note: Public property represented on this map is not intended to be inclusive.

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City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Public Hearing and Request for Letter of Intent to Issue Industrial Revenue Bonds (Air Capital Flight Line, LLC) (District III)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.

Background: On April 12, 2022, the City Council approved a speculative Maintenance, Repair and Overhaul (MRO) program for the development of large airfield hangar buildings. The program requires developers to build at least 50,000 square feet (75,000 square feet is preferred) with clear height of at least 45 feet.

Air Capital Flight Line, LLC (ACFL) is requesting a Letter of Intent through December 31, 2024 for the issuance of Industrial Revenue Bonds (IRBs) not to exceed \$10,000,000 for the construction of a speculative MRO building. The project would be constructed on its campus at 4174 South Oliver. It would be eligible for a 95% ad valorem tax abatement for the first five years, and if the property is at least 50% leased at the five-year anniversary, it would be eligible for a 50% ad valorem tax abatement for the second five years, subject to City Council approval. The developer also receives a sales tax exemption on eligible expenses.

Analysis: Then Greater Wichita Partnership reports that many businesses looking to expand make their location decisions based on having facilities available within short timeframes.

ACFL partners Johnny Stevens and Dave Murfin intend to build a 75,000 square-foot facility with 75-foot clear height to accommodate wide body aircraft. They do not have tenants but are aware of interest and want to make Wichita a viable option for businesses looking for such space.

To be eligible to receive the incentive, the developers are required to begin construction within 120 days of City Council approval and must complete construction within 15 months of City Council approval, pending supply chain issues or regulatory requirements.

ACFL is currently constructing an MRO facility that is the same size and has been leased to the Kansas Modification Center, which is a partnership between the National Institute for Aviation Research at Wichita State University and Sequoia Aircraft Conversions. That facility will be used to convert Boeing 777s from passenger jets to cargo planes. No incentives were available or requested for that facility. Going forward, investment in such large buildings without committed tenants poses substantially more risk, especially given the challenging construction market.

Financial Considerations: ACFL agrees to pay all costs of the City relative to the issuance of the bonds. The company also agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds.

Based on the latest available mill levy, the estimated value of the 95% property tax for the first full year is approximately \$307,805. The value of a 95% real property tax exemption as applicable to taxing jurisdictions is:

City	\$ 77,778	State	\$ 3,562
County	\$ 69,777	USD 260	\$ 156,688

A benefit/cost analysis report was completed using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research. The ratios of benefits-to-costs are as follows:

City of Wichita	1.36 to 1.00
City of Wichita Gen Fund	1.15 to 1.00
City of Wichita Debt Serv	NA to 1.00
Sedgwick County	1.35 to 1.00
USD 260	2.15 to 1.00
State of Kansas	1.87 to 1.00

Legal Considerations: Bond documents needed for the issuance of bonds will be prepared by bond counsel, Gilmore & Bell PC. The City's Law Department will review and approve the final form of bond documents prior to issuance of any bonds.

Recommendations/Actions: It is recommended the City Council close the public hearing, adopt the Resolution of Intent and authorize the necessary signatures.

Attachments: Letter of Intent Application, Resolution of Intent



March 29, 2022

Mayor and Members of the City Council
City of Wichita, Kansas
c/o Department of Urban Development
455 N. Main, 13th Floor
Wichita, Kansas 67202
Attn: Assistant City Manager and Director of Development

Re: Proposed City of Wichita, Kansas
Industrial Revenue Bonds
(Air Capital Flight Line, LLC Project)

Ladies and Gentlemen:

Air Capital Flight Line, LLC, a Kansas limited liability company ("ACFL"), respectfully requests that the City of Wichita, Kansas (the "City") issue a Letter of Intent to issue its Industrial Revenue Bonds within the next approximate year, and in a principal amount of not to exceed \$10,000,000 (the "Bonds") pursuant to K.S.A. 12-1740 *et seq.* (the "Act"). The proceeds of the Bonds will finance the construction of a Wide Body Hanger, as well as the purchase of machinery and equipment and related capital investments (the "Project"), which are essential to support certain programs for a Maintenance and Repair Facility or Wide Body Conversion Facility, to be located at ACFL's Facilities (hereinafter defined), which are not located within the corporate limits of the City, but within three miles thereof.

The following information is submitted in support of ACFL's request:

1. Name and address of ACFL and any other entities that may guarantee the repayment of the Bonds:

Tenant & Guarantor:
Air Capital Flight Line, LLC
4174 South Oliver Street
Wichita, KS 67210

Sub-Tenant:
TBD
Wichita, KS 67210

2. Names and addresses of the principal owners and legal counsel of ACFL:

Exhibit “A” attached.

3. A general description of the nature of the business of ACFL:

ACFL is the owner of certain property located in Wichita, Kansas consisting of over 1,400,000 sf of buildings, associated improvements and related land consisting of approximately 323.96 acres, and more specifically described on Exhibit “B” attached hereto (the “Property”). The Facilities are attached hereto as Exhibit “C”.

4. A general description of the proposed Project at the Facilities:

The Facilities will be used for general office, manufacturing, aircraft modification, fit-out, aircraft conversions and repair and such other lawful purposes required in conjunction with the Project. The total square footage of the new hanger is 75,000 square feet.

5. The specific location of the proposed Project (not a legal description):

Please see attached Exhibit “D” for the legal description for the Facilities in which the Project is located, the address commonly known as the East side of South Oliver Street between 31st Street South and E. MacArthur Rd.

6. A statement of the projected benefits to the city:

This Project will provide a new facility for new manufacturing space necessary to support commercial aircraft modification, conversion, and maintenance of Wide Body aircraft.

A more detailed breakdown of the benefits of this Project to the City is further explained in the Cost Benefit Analysis (the “CBA”) being prepared by Wichita State University (“WSU”) Center for Economic Development and Business Research.

The dollar amount of the Bonds being requested (not to exceed):

\$10,000,000

7. A detailed breakdown of the proposed costs including an estimate of underwriting fees and other miscellaneous expenses:

Building Improvement, Specialized Equipment, and Integrated Production Equipment: \$10,000,000

Components of the project include but are not limited to the following:

- New building for aerospace manufacturing programs
- 250 ft clear span

- Ceiling height of 75 ft
- Furnaces
- Specialized Equipment and Improvements
- Air compressor systems

8. The name and address of the proposed purchasers of the Bonds:

Air Capital Flight Line, LLC will issue a Private Placement bond structure. The Bonds will be based on Air Capital Flight Line, LLC's financial capacity and will be held for their own account. The address is as follows:

Air Capital Flight Line, LLC
4174 South Oliver Street
Wichita, KS 67210

9. Agreement to pay for Bond issuance costs.

ACFL agrees to pay for the services of Bond Counsel and to pay all other costs of the City, including any City related legal expenses, relating to the issuance of the Bonds regardless of whether the Bonds are ultimately approved or issued.

10. A statement relative to ad valorem taxes.

ACFL plans to continue paying ad valorem property taxes based on the existing land valuation, however it requests an exemption for such taxes for a 10-year period for any improvements related to the Facilities. Additionally, ACFL requests a 100% exemption from all applicable sales taxes for costs of the Project financed with proceeds of the Bonds.

11. Administrative Service Fee Agreement.

ACFL will make payments to the city under an administrative service fee agreement to be entered into in connection with the issuance of the Bonds in the amount of \$2,500 per year commencing one year after the issuance of the Bonds.

12. A brief statement relative to the effects of the proposed project on the ambient air quality of the city and any other applicable environmental considerations.

ACFL is in compliance with all federal and state emission permits for air, water, and hazardous materials. Proposed capital projects will be executed in compliance with relevant federal and state requirements.

13. Equal Opportunity Employment.

ACFL will comply with the policies of the City with respect to equal employment opportunity.

14. Any other information which would be helpful, or which is desired to be given to help determine the propriety of the City issuing the Bonds.

15. Additional material included:

a. Cost Benefit Analysis attached as Exhibit “D”.

ACFL is aware that such a Letter of Intent is only an indication of the intent of the City to issue the proposed Bonds and that such Letter of Intent is subject in all respects to the City Council’s final approval of the terms and provisions of the financing documents

Please contact the undersigned if you have any questions or require additional information.

Respectively Submitted,

Air Capital Flight Line, LLC

Name: Charlie Stevens

Title: Manager

EXHIBIT “A”

Owners and Legal Counsel

1. Air Capital Flight Line, LLC is owned as follows:
 - a. 50% Murfin, Inc. (250 N. Water, Suite 250, Wichita, KS 67206)
 - b. 50% Johnny W & Marjorie M Stevens 1999 Irrevocable Trust (1223 N Rock Rd, Wichita, KS 67206)
2. Legal Counsel related hereto:
 - a. Justin Elkouri, counsel for Murfin, Inc. (250 N. Water, Suite 250, Wichita, KS 67206)
 - b. Andrew Kovar – Triplett Woolf Garretson, LLC (2959 N. Rock Road, Suite 300 Wichita, Kansas 67226)

EXHIBIT "B"

Property Map

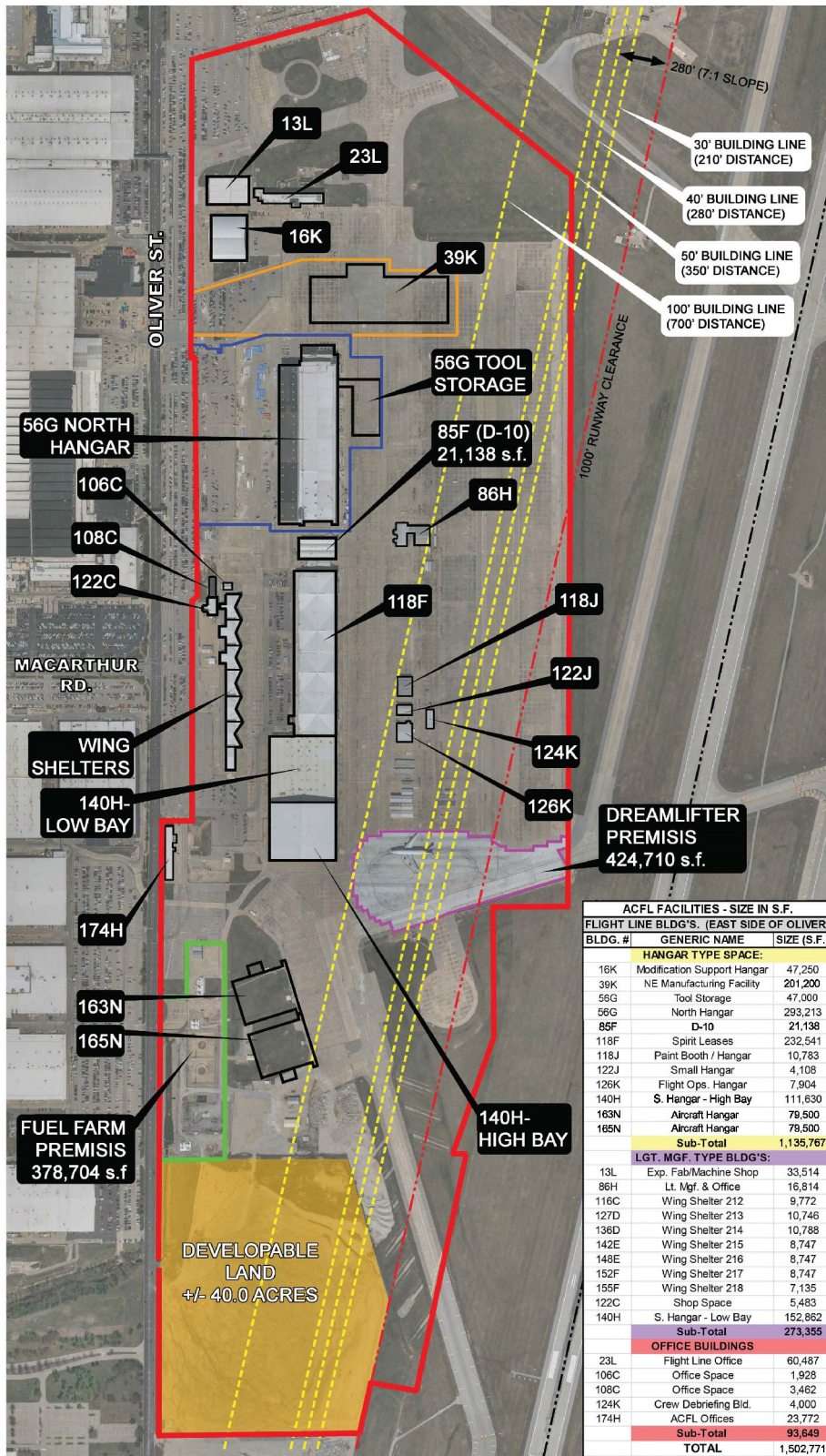


EXHIBIT "C"

Facilities Map



Overall 1/16" = 1'-0"



STEN inc. 216.640.0865
8115 W 2nd St. Wichita KS 67203
© 2019 STEN STUDIO, INC.

165N Build out option



FOR REVIEW - December 13, 2021



RESOLUTION NO. 22-116

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING OR COMMERCIAL FACILITY TO BE LOCATED IN THE ENVIRONS OF SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, for the purpose of providing funds to finance the cost of a facility for manufacturing, aircraft modification, fit-out, aircraft conversions and repair (the "Project") to be located in the environs of the City and to be leased by the City to Air Capital Flight Line, LLC (the "Tenant") and subleased to a subtenant to be determined (the "Subtenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City and its environs, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$10,000,000 (collectively, the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's and Subtenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds (the "Letter of Intent") in accordance with the City of Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Tenant and Subtenant and acceptable to the City (the

"Purchaser"), which sale shall be the responsibility of the Tenant and Subtenant and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Tenant and Subtenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Tenant, Subtenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals and (f) the execution and delivery by the Tenant, with approval of the Subtenant, of an agreement for payment in lieu of taxes referenced in **Section 4** hereof.

Section 4. Property Tax Exemption. The Governing Body hereby determines, that pursuant to the provisions of K.S.A. 79-201a, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; and further provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*; and (c) for real estate on which the Project is located.

Based on the application by the Tenant for the Project to be constructed under the City's Speculative Industrial/Flex Buildings (the "Speculative Building Program"), the Governing Body hereby conditionally approves a 95% ad valorem property tax exemption on the Bond-financed property not excluded in the prior sentence of this section, for a five year term, with a 50% ad valorem property tax exemption for an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's ongoing compliance with the Guidelines and the Speculative Building Program.

In the event the Tenant enters into a sublease on or before December 31, 2022 with a Subtenant who will employ full-time equivalent employees being paid wages that would make the Project eligible under the Guidelines for a larger percentage of an ad valorem property tax exemption, and the Subtenant agrees to and signs the Letter of Intent dated April 19, 2022 between the City and the Tenant, the Governing Body conditionally approves the percentage of ad valorem property tax exemption on the Bond-financed property consistent with the Guidelines.

Prior to making a determination on an ad valorem property tax exemption, the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore and compliance with State Department of Revenue procedures and guidelines. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 6. Reliance by Tenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the

Bonds; provided that such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant and Subtenant that the Bonds will actually be issued. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant or Subtenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant and Subtenant. After compliance with the provisions of the Letter of Intent by the Tenant and Subtenant has been demonstrated, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant and Subtenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; and (b) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2023, unless extended by affirmative vote of a majority of the Governing Body.

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ADOPTED by the City Council of the City of Wichita, Kansas, on April 19, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on April 19, 2022, as the same appears of record in my office.

DATED: April 19, 2022.

Karen Sublett, City Clerk

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**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON APRIL 19, 2022**

The City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”) met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent: .

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Among other business, in accordance with notice published on April 8, 2022, in the *Wichita Eagle*, a public hearing was held by the Governing Body relating to the proposed issuance of not to exceed \$10,000,000 principal amount of Taxable Industrial Revenue Bonds (Building 165N Project) (the “Bonds”). All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE
INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE
ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING
OR COMMERCIAL FACILITY TO BE LOCATED IN THE ENVIRONS OF SAID
CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.**

Thereupon, [] moved that said Resolution be adopted. The motion was seconded by []. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the Governing Body, the vote being as follows:

Aye:

Nay:

Thereupon, the Resolution was then duly numbered Resolution No. 21-[], and was signed by the Mayor and attested by the Clerk.

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the City Council of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

Karen Sublett, City Clerk

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Public Hearings Considering an Amendment to the Delano and Stadium Redevelopment Plan and Approval of a Development Agreement with Wichita Riverfront LP and EPC Real Estate Group, LLC (Districts IV and VI)

INITIATED BY: Office of Economic Development

AGENDA: New Business

Recommendation: Close the public hearings, adopt the amended Delano and Stadium Redevelopment Plan, approve the development agreement with Wichita Riverfront LP (WRLP) and EPC Real Estate Group, LLC (EPC) and adopt the ordinances.

Background: On July 25, 2017, the City Council approved a Tax Increment Financing (TIF) Project Plan called the Delano and Stadium Project Plan. On December 19, 2019, the City Council expanded the redevelopment district to include additional land within the Delano Neighborhood that would allow additional street, parking and infrastructure investment. On March 20, 2019, the City Council approved a Development Agreement (DA) with Wichita Riverfront LP for development of six parcels comprising approximately four acres.

On December 21, 2021, the City Council approved a Memorandum of Understanding (MOU) with WRLP and EPC for an initial phase of development that is significantly larger than the first phase of the DA approved in 2019. The private development resides within CID, TIF, and STAR bond districts with the intent to generate tax revenue to support payment of debt service for Riverfront Stadium. The MOU included a request to use Tax Increment Financing (TIF) to fund a portion of the project. The use of TIF requires an amendment to the TIF project plan originally adopted in 2017. On April 5, 2021, the City Council set April 19, 2021, as the date to consider the Project Plan Amendment of the proposed Development Agreement.

Analysis: The proposed project will develop three parcels consisting of approximately two acres of vacant land north of Maple, south of Texas Street on both sides of McLean Boulevard. The project will include a mix of multi-story hospitality, retail, and Class A office space, with architecture and materials that fit the neighborhood and comply with the Stadium PUD. Since the MOU was approved, the developer has revised the proposed plans to include more density than originally planned and construction two years sooner than previously envisioned. The City and Developer have negotiated a development agreement based on the terms provided in the MOU, with changes to address the increased density of the project and financing gap. The City will agree to certain benefits for the Developer, further described below, provided the Developer satisfies specific performance obligations.

The Developer agrees to develop approximately two acres to meet specific performance measures in construction and operation of the project to receive and retain the City benefits. The measures have been incorporated into the DA and are summarized below:

- Construct a full service, upscale hotel of not less than six floors and consisting of approximately 160 rooms
- Construct two office buildings with approximately a combined 88,970 square feet and approximately 31,125 square-feet of ground floor retail
- Construct a parking structure consisting of approximately 283 spaces
- Construct certain public riverbank improvements located approximately between Texas and Maple Street alignments

- The Development has been awarded \$5,000,000 in State BASE (ARPA) funding for public riverfront improvements
- Meet certain Project Milestones, including the following:
 - Project commencement by July 7, 2022
 - Completion by July 7, 2024

In recognition of the development proposed by WRLP and EPC, the City agrees to offer the benefits summarized below:

- Tax Increment Financing
 - \$8,683,400 in TIF pay-as-you-go financing for the construction of a parking garage and other TIF-eligible site infrastructure
 - Pay-as-you-go puts risk on developer
 - The TIF funds will secure a garage parking easement for free public parking for weekday evenings and all day on the weekends
- Provide Industrial Revenue Bond (IRB) for the office buildings
 - Estimated exemption value of \$906,500
- The City and Developer will coordinate to design the riverfront improvements

The City agrees that as long as the Developer remains compliant with the DA amendment, it will provide the above-described benefits. In the event the Developer fails to meet the minimum requirements or maintain the property per the agreement, the Developer will lose the incentives.

The development project is expected to generate significant net new tax revenue over the original projected revenue for the two lots to support the TIF, CID, and STAR Bond districts. A breakdown of the projected \$23.8 M in net new revenue over the original phase I & II projections is shown below.

MOU Project 12-21-2021	Phase 1 Revenue Generated	Developer Benefit	City Benefit - MOU	Original Phase 1 and Phase 2 Projections	New City Benefit
TIF Cash Flow	\$ 11,228,019	\$ 5,000,000	\$ 6,228,019	\$ 2,432,467	\$ 3,795,552
CID Cash Flow	\$ 4,930,205	\$ -	\$ 4,930,205	\$ 4,301,431	\$ 628,774
STAR Cash Flow	\$ 12,821,234	\$ -	\$ 12,821,234	\$ 11,985,621	\$ 835,613
Construction Sales Tax (Exemption)	\$ 2,663,422	\$ -	\$ 2,663,422	\$ 393,750	\$ 2,269,672
TBID and LST	\$ 12,505,287	\$ -	\$ 12,505,287	\$ -	\$ 12,505,287
Land Value	\$ (500,000)	\$ 500,000	\$ (500,000)	\$ (500,000)	\$ -
Total	\$ 43,648,167	\$ 5,500,000	\$ 38,648,167	\$ 18,613,269	\$ 20,034,898

Proposed Project 4-19-2022	Phase 1 Revenue Generated	Developer Benefit	City Benefit - Proposed	Original Phase 1 and Phase 2 Projections	New City Benefit
TIF Cash Flow	\$ 14,019,514	\$ 8,683,400	\$ 5,336,114	\$ 2,432,467	\$ 2,903,647
CID Cash Flow	\$ 6,273,121	\$ -	\$ 6,273,121	\$ 4,301,431	\$ 1,971,690
STAR Cash Flow	\$ 16,313,562	\$ -	\$ 16,313,562	\$ 11,985,621	\$ 4,327,941
Construction Sales Tax (Exemption)	\$ 2,590,055	\$ 906,500	\$ 1,683,555	\$ 393,750	\$ 1,289,805
TBID and LST	\$ 13,338,945	\$ -	\$ 13,338,945	\$ -	\$ 13,338,945
Land Value	\$ (500,000)	\$ 500,000	\$ (500,000)	\$ (500,000)	\$ -
Total	\$ 52,035,196	\$ 10,089,900	\$ 42,445,296	\$ 18,613,269	\$ 23,832,027

The Development will also serve as a catalyst for additional development within the Riverfront Stadium area. This project, when completed, will contain the equivalent of over 50,000 square feet of retail space which means it will meet the square footage of retail as required for Phases I & II under the existing City/WRLP Development Agreement. The Development will also accelerate the development completion timelines for Phase I & II from July 2026 to July 2024.

Pursuant to City Council policy, the City Manager appointed a team of area citizens, business representatives and City staff to evaluate the developer's request. The evaluation team found that the developer's request meets all threshold requirements established by City Council policy and earned greater than the minimum required score in each of the three categories of evaluation criteria established by City Council policy.

Current and planned private development, including this proposed project, around the stadium and Delano is substantially greater than initially envisioned. Additional land from the 2019 expansion as well as increased development activity have created a need for additional infrastructure investment. This increased development has created a need to increase the TIF capacity to accommodate additional needs for parking and public infrastructure.

The 2019 TIF district expansion increased the boundary for the redevelopment district; however, it left the TIF project area with the 2017 boundary. The amended project plan corrects this to again include all of the land within the district, as originally proposed. Expanding the project area to include all of the district allows TIF-eligible improvements to occur within the entire redevelopment district.

In addition to amending the project area, the TIF budget and bond amount are amended. The TIF budget has increased from \$29,500,000 to \$40,000,000 to allow for additional improvements within the district. It also includes an additional line item for land acquisition related to land the City acquired to provide additional parking for the stadium. The \$24,000,000 in TIF bond authority is a cap on the amount the City can issue; the City is not obligated to issue the full amount. After closing the public hearing, the City Council may adopt the TIF Project Plan by ordinance, by two-thirds majority vote.

Financial Considerations: The City will provide up to \$8,683,400 in pay-as-you-go TIF revenue for a garage and site improvements and an IRB for sales tax exemption for the office component.

Legal Considerations: The Law Department and outside bond counsel reviewed the TIF project plan, ordinances and Development Agreement and approved them as to form.

Recommendations/Actions: It is recommended the City Council close the public hearings, approve the Development Agreement with Wichita Riverfront LP and EPC Real Estate Group, LLC, adopt the amended project plan, adopt the ordinances and authorize the necessary signatures.

Attachments: Development Agreement, Amended Project Plan, Ordinances

City of Wichita
West Bank Redevelopment District
Amended
Delano And Stadium
Project Plan

April, 2022

Prepared by City of Wichita
Office of Urban Development

I N D E X

1. Comprehensive Financial Feasibility Study
2. Redevelopment District Plan
3. Map and Legal Description of Property to be Redeveloped
4. Relocation Assistance Plan
5. Description of Proposed Redevelopment Project
6. City Council Ordinances and Resolutions
7. Metropolitan Area Planning Commission Resolution

*Comprehensive Financing Feasibility Study for the
Delano And Stadium Project
within the
West Bank Redevelopment District
City of Wichita, Kansas*

Table of Contents

	<u>Page (s)</u>
OVERVIEW.....	1-2
GENERAL DESCRIPTION OF TAX INCREMENT	3
PROJECT DESCRIPTION	4
PROJECTED REVENUE (BENEFITS)	4-5
PROJECTED EXPENDITURES (COSTS)	5
CONCLUSIONS	6
Map of the Redevelopment District and Project Area.....	EXHIBIT I
Assumptions Report	EXHIBIT II
Projected Tax Increment Report	EXHIBIT III
Projected Bond Cash Flow Report	EXHIBIT IV

Overview

K.S.A. 12-1770 *et seq.* (“the Act”) provide a means for cities to finance all or a portion of public infrastructure and redevelopment costs with incremental real estate and sales taxes. The purpose of the Act is to “promote, stimulate and develop the general and economic welfare of the State of Kansas (the “State”) and its communities, and to assist in the development and redevelopment of blighted areas and deteriorating areas which are not yet blighted, but may be so in the future, located within cities...”.

A city may exercise the powers conferred under the Act provided that the governing body of the city has adopted a resolution making certain findings that the specific area sought to be developed or redeveloped is an eligible area pursuant to the Act, including a blighted area, a conservation area or was designated an enterprise zone prior to July 1, 1992. In addition, the city must find that the conservation, development or redevelopment of such an area is necessary to promote the general and economic welfare of the city.

One or more redevelopment projects may be undertaken within a redevelopment district created pursuant to the Act. The Act generally requires projects to be completed within 20 years from the date of approval of the redevelopment project plan.

For each redevelopment project undertaken within a district, a redevelopment project plan must be prepared in consultation with the city’s Planning Commission. The project plan must include the following:

1. A summary or copy of the Comprehensive Financial Feasibility Study.
2. A reference to the statutorily required district plan for the district.
3. A description and map of the area to be redeveloped.
4. The Relocation Assistance Plan (if applicable).
5. A detailed description of all buildings and facilities proposed to be constructed or improved.
6. Any other information the City deems necessary to advise the general public of the intent of the Project Plan.

The Comprehensive Financial Feasibility Study (this document) must show that the benefits derived from the specified redevelopment project will exceed the costs, and that the income therefrom will be sufficient to pay for the applicable project costs. Benefits are determined to be the aggregate revenues of the redevelopment project including increment income, assessment income, interest income, private party contributions and any other available funding sources. Costs are determined to be the total of eligible project expenditures, including the payment of principal and interest of debt used to finance the redevelopment project.

Pursuant to all the provisions of the Act, the City has, by Ordinance No. 50-434 dated April 18, 2017, found a portion of the City was designated as an Enterprise Zone prior to July 1, 1992 and that redevelopment of the area is necessary to promote the general and economic welfare of the City. With adoption of Ordinance No. 50-434, the City established and designated such area as the West Bank Redevelopment District (“the District”). On December 17, 2019, the City adopted Ordinance 51-164, further expanding the District. The District boundaries are shown in Exhibit I. Ordinance No. 51-164 also includes the statutorily required district plan for the redevelopment of the District.

The City is currently considering an amendment to the Delano And Stadium Project (“the Project”) within the District. Due to changes in the size and scope of development within the project area, additional parking and infrastructure improvements are needed. An amendment to the project plan is needed to accommodate the increased need for parking and infrastructure. It is contemplated that the entire district will be considered the project area (the “Project Area”). The development of the area includes construction of a modern multi-sport stadium, Riverfront Stadium, and development of the “Delano Catalyst Site”, both of which have been completed since adoption of the plan but are planned to be financed with tax increment financing. Additional development is planned within the Delano neighborhood and surrounding the stadium.

The City will use TIF funds to finance a portion of the costs associated with redevelopment of Lawrence Dumont Stadium into Riverfront Stadium. Additional project costs will include construction of a greenspace/multi-modal path, public infrastructure related to redevelopment of the Project Area and parking improvements to support the development. The City will provide public funding, including tax increment financing, STAR bond financing and general obligation bond financing to finance the project costs.

General Description of Tax Increment

Property tax increment financing involves the creation of an increment (increase over a base value) in the real estate taxes generated from a defined geographic area of a community. Upon establishment of a redevelopment district, the total assessed value of all taxable real estate within the district for that year is determined. This valuation is referred to as the district's "Original Assessed Value." Property taxes attributable to the district's Original Assessed Value are annually collected and distributed by the county treasurer to the appropriate city, county, school district and all other applicable taxing jurisdictions in the same manner as other property taxes.

As new development occurs within the redevelopment district, the total assessed value of the district, in any given year, will normally exceed its Original Assessed Value. Property taxes generated by applying the sum of the property tax rates of all applicable taxing jurisdictions to the incremental increase in assessed value (over and above the Original Assessed Valuation) is referred to as the "property tax increment". All property tax increment is collected by the County and distributed to the City to be deposited in a special tax increment fund.

Sales tax increment financing involves the creation of an increment (increase over a base value) in the local sales taxes generated from a defined geographic area of a community. Upon establishment of a redevelopment district, a base value of local sales tax collections within the district is determined. As new commercial development occurs within the redevelopment district, sales tax collections are expected to increase above the base value. Pursuant to city law governing the use of local sales tax revenue, the City does not intend to collect incremental sales tax revenues as "sales tax increment".

Tax increment funds may only be used to pay for certain statutorily-defined eligible project costs, including principal and interest on debt issued, in whole or in part, to finance eligible project costs within the redevelopment district. Such debt includes notes, special obligation bonds, full faith and credit tax increment bonds, and other debt instruments. The City intends to issue its full faith and credit tax increment bonds to finance a portion of the Delano And Stadium Project costs that are eligible for tax increment financing, including infrastructure improvements, streetscaping and pedestrian improvements. Additional eligible improvements identified in this project plan may be paid on a pay-as-you-go basis with additional revenue that exceeds debt service payments on bonds.

Project Description

The Project consists of the redevelopment of Lawrence Dumont Stadium into a multi-sport stadium, additional development surrounding the stadium, development of approximately seven acres known as the “Delano Catalyst Site,” and additional development and redevelopment within the district. Improvements to be financed by tax increment financing include a multi-sport stadium, a greenway/multi-modal path south of the Delano Catalyst Site, as well as infrastructure and parking improvements within the district to support the increased development. Tax increment funds may also be used to pay for eligible improvements financed through general obligation bonds and to reimburse additional eligible project costs when additional tax increment revenues are available.

Projected Revenues (Benefits) Captured Assessed Value

It is the City’s intention to use the property tax increment generated by the District to pay the debt service on general obligation bonds issued by the City to finance its contribution to the Project. The property tax increment is based on the District’s increase in assessed value over its Original Assessed Value. This increase in value is expected to be recorded beginning in January 2019 through January 2026 (project completion in 2025) and is referred to as the Captured Assessed Value.

The Total Assessed Value for the Project Area as of January 1, 2026 is estimated to be \$36,510,155. The Original Assessed Value of the Project Area, as assessed in January 2017, is \$4,005,267, according to data provided by the City of Wichita Geographic Information Service. Therefore, the estimated Captured Assessed Value of the Project Area as of January 1, 2026 is \$32,504,888.

For the purpose of this analysis, it is assumed that the Total Assessed Value of the District will increase during the life of the project period at the annual inflation rate of 2%.

Property Tax Rates

To determine the amount of tax increment generated by the District in any given year, the Captured Assessed Value of the District must be multiplied by the sum of the tax rates for all *applicable* taxing jurisdictions for that year. For taxes levied in 2021 and payable in 2022, the applicable rate is 94.462 mills as shown below. The State of Kansas rate of 1.5 mills is not applicable to TIF and has been omitted from the following total:

Jurisdiction	Mill Rate (2021)
City of Wichita	32.578
Sedgwick County	29.370
USD No. 259	32.514
State of Kansas	0.000
TIF Applicable Mill Rate	94.462

Projected Property Tax Increment and Other Project Revenue

The projected property tax increment generated by the District is shown in column 7 of *Exhibit III*. Such projections are based on captured assessed values derived from Captured Assessed Valuations and tax rates as previously discussed. It is assumed that Project construction will begin in 2018 and be completed before the end of 2025, and therefore achieve full valuation by January 1, 2026. It is estimated that in 2026 the property tax increment will be \$2,080,089. The City anticipates that TIF revenue above and beyond the costs to bond the TIF project will be used to reimburse G.O.-financed, TIF-eligible improvements and then additional TIF-eligible improvements on a pay-as-you-go basis.

All tax increment shall be allocated and paid by the Sedgwick County Treasurer to the City Treasurer in the same manner and at the same time as normal property taxes. All such incremental taxes must be deposited in a special fund of the City for the payment of eligible redevelopment costs.

Projected Expenditures (Costs)

A projected budget for the eligible project costs in the Project Area is listed below. Improvements are projected to cost \$40,000,000 with \$24,000,000 of such costs to be financed from proceeds of the City's full faith and credit tax increment bonds (the "Bonds").

Stadium	\$ 8,000,000
Greenway and Path	\$ 3,000,000
Street and Infrastructure Improvements	\$10,000,000
Parking	\$15,000,000
Land	\$ 1,500,000
Contingency	\$ 1,500,000
Financing and Other Costs	<u>\$ 1,000,000</u>
Total TIF Project costs	\$40,000,000

Sources	
Par Amount of Bonds	\$24,000,000
Uses	
Stadium Construction	\$ 8,000,000
Greenway	1,500,000
Infrastructure and Parking	12,000,000
Land Acquisition	1,500,000
Financing and Other Costs	<u>1,000,000</u>
	\$24,000,000

Incremental tax revenue available after the payment of such Bonds may be used to pay for additional TIF-eligible project costs on a pay-as-you-go basis or reimburse the debt service on City general obligation bonds issued to finance a portion of the cost of the TIF-eligible improvements, if any. Exhibit IV illustrates a \$24,000,000 taxable general obligation tax increment bond issue sold in 2022.

Conclusions

Kansas Statutes require the Comprehensive Financial Feasibility Study to demonstrate that the benefits derived from the Project will exceed the costs and that the income therefrom will be sufficient to pay for all eligible project costs. As previously discussed, *Exhibit III* illustrates the projections of tax increment through the year 2037. Projected net tax increment revenue is available to pay debt service on outstanding general obligation bonds issued to finance eligible project costs.

Exhibit IV (Projected Bond Cash Flow Report) illustrates that projected tax increment from the District will be sufficient to pay for all eligible project costs including the projected debt service on general obligation bonds issued to finance such costs. As such, this report demonstrates that the revenues (benefits) of the District and Project Area exceed the expenditures (costs).

Exhibit I
MAP OF WEST BANK REDEVELOPMENT DISTRICT
AND PROJECT AREA



EN 600809.70449 ORDINANCE - JIF DISTRICT CREATION (04-03-17)

City of Wichita, Kansas
West Bank Redevelopment District
Delano And Stadium Project

Original Appraised Value (1/1/17)	\$27,471,630
Original Assessed Value (1/1/17)	\$4,005,267
2025 Appraised Value (1/1/26)	\$141,699,601
2025 Assessed Value (1/1/26)	\$ 36,510,155

2021 Mill Rates	Total	TIF Applicable
City of Wichita	32.758	32.758
Sedgwick County	30.870	29.370
USD No. 259	52.514	32.514
State of Kansas	0.000	0.000
Total	116.142	94.642

105

Projected Tax Increment Report

City of Wichita, Kansas
West Bank Redevelopment District
Delano and Stadium Amended Project

Levy & Appraised Year (1)	Year Taxes Distributed (2)	Total Assessed Value (3)	Original Assessed Value (4)	Captured Assessed Value (5)	Mill Rate (6)	Tax Increment Collected (7)
2017	2018	\$ 4,005,267	4,005,267	-	94.642	-
2018	2019	\$ 4,005,267	4,005,267	-	94.642	-
2019	2020	\$ 4,784,588	4,005,267	779,321	94.642	73,756
2020	2021	\$ 6,482,525	4,005,267	2,477,258	94.642	234,453
2021	2022	\$ 7,247,641	4,005,267	3,242,374	94.642	306,865
2022	2023	\$ 14,225,874	4,005,267	10,220,607	94.642	967,299
2023	2024	\$ 20,466,453	4,005,267	16,461,186	94.642	1,557,920
2024	2025	\$ 24,930,285	4,005,267	20,925,018	94.642	1,980,386
2025	2026	\$ 36,510,155	4,005,267	32,504,888	94.642	3,076,328
2026	2027	\$ 38,144,008	4,005,267	34,138,741	94.642	3,230,959
2027	2028	\$ 38,876,743	4,005,267	34,871,476	94.642	3,300,306
2028	2029	\$ 39,624,001	4,005,267	35,618,734	94.642	3,371,028
2029	2030	\$ 40,386,071	4,005,267	36,380,804	94.642	3,443,152
2030	2031	\$ 41,163,248	4,005,267	37,157,981	94.642	3,516,706
2031	2032	\$ 41,955,833	4,005,267	37,950,566	94.642	3,591,717
2032	2033	\$ 42,764,133	4,005,267	38,758,866	94.642	3,668,217
2033	2034	\$ 43,588,461	4,005,267	39,583,194	94.642	3,746,233
2034	2035	\$ 44,429,136	4,005,267	40,423,869	94.642	3,825,796
2035	2036	\$ 45,286,484	4,005,267	41,281,217	94.642	3,906,937
2036	2037	\$ 46,160,836	4,005,267	42,155,569	94.642	3,989,687

EXHIBIT III

Projected Bond Cash Flow Report

City of Wichita, Kansas
West Bank Redevelopment District
Delano and Stadium Amended Project

Annual Period Ending (1)	Principal (2)	G.O. Interest Rate (3)	Interest (4)	P&I (5)	Net Tax Increment (6)	Annual Balance (7)	Cumulative Balance (8)
7/10/2018	-	3.50%	-	-	-	-	-
7/10/2019	-	3.50%	-	-	73,756	73,756	73,756
7/10/2020	-	3.50%	-	-	234,453	234,453	308,209
7/10/2021	-	3.50%	-	-	306,865	306,865	615,074
7/10/2022	240,429	3.50%	504,571	745,000	967,299	222,299	837,373
7/10/2023	206,423	3.50%	993,577	1,200,000	1,557,920	357,920	1,195,292
7/10/2024	557,370	3.50%	967,630	1,525,000	1,980,386	455,386	1,650,678
7/10/2025	1,431,498	3.50%	933,502	2,365,000	3,076,328	711,328	2,362,005
7/10/2026	1,606,277	3.50%	878,723	2,485,000	3,230,959	745,959	3,107,964
7/10/2027	1,720,850	3.50%	819,150	2,540,000	3,300,306	760,306	3,868,270
7/10/2028	1,838,873	3.50%	756,127	2,595,000	3,371,028	776,028	4,644,298
7/10/2029	1,960,514	3.50%	689,486	2,650,000	3,443,152	793,152	5,437,450
7/10/2030	2,085,949	3.50%	619,051	2,705,000	3,516,706	811,706	6,249,156
7/10/2031	2,220,363	3.50%	544,637	2,765,000	3,591,717	826,717	7,075,874
7/10/2032	2,354,090	3.50%	465,910	2,820,000	3,668,217	848,217	7,924,090
7/10/2033	2,497,192	3.50%	382,808	2,880,000	3,746,233	866,233	8,790,323
7/10/2034	2,650,034	3.50%	294,966	2,945,000	3,825,796	880,796	9,671,119
7/10/2035	2,803,002	3.50%	201,998	3,005,000	3,906,937	901,937	10,573,056
7/10/2036	2,966,184	3.50%	103,816	3,070,000	3,989,687	919,687	11,492,743
	27,139,048		9,155,952	36,295,000	47,787,743	11,492,743	

District Plan

EXHIBIT C

REDEVELOPMENT DISTRICT PLAN FOR THE REDEVELOPMENT OF THE WEST BANK REDEVELOPMENT DISTRICT THROUGH TAX INCREMENT FINANCING

December 2019

SECTION 1: PURPOSE

A district plan is required for inclusion in the establishment of a redevelopment district under K.S.A. 12-1770 *et seq.* (the “Act”). The district plan is a preliminary plan that identifies proposed redevelopment project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

SECTION 2: DESCRIPTION OF TAX INCREMENT INCOME

Projects financed through tax increment financing typically involve the creation of an “increment” in real estate property tax income. The increment is generated by segregating the assessed values of real property located within a defined geographic area such that a portion of the resulting property taxes flow to the City to fund projects in the redevelopment district, and the remaining portion flows to all remaining taxing jurisdictions. The portion of property taxes flowing to the City is determined by the increase in the assessed value of the properties within the redevelopment district as a result of the new development occurring within the same area. When the current aggregate property tax rates of all taxing jurisdictions are applied to this increase in assessed property value from new development, increment income is generated. Public improvements within the district and other qualified expenditures are funded by the City and repaid over a specified period of time with this increment income. The property taxes attributable to the assessed value existing prior to redevelopment, the “original valuation,” continue to flow to all taxing jurisdictions just as they did prior to redevelopment. This condition continues for the duration of the established district, as defined by statute, or until all eligible project costs are funded, whichever is of shorter duration.

SECTION 3: DESCRIPTION OF THE DISTRICT BOUNDARIES

The ordinance that created the West Bank Redevelopment District within the boundaries of the City, which was generally bounded by Kellogg to the south, McLean Boulevard to the East, North to 2nd street and the West boundary follows the West boundary of the Advanced Learning Library Addition south to Pearl Street, West to Seneca Street, South to Texas Avenue and then back East to Sycamore and South back to Kellogg Avenue, all in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas. The City adopted an additional ordinance that modified the boundaries of the district by adding additional property to the district, as follows: (a) property located West of the high bank of the Arkansas River and East of the center line of McLean Boulevard, South of Douglas Avenue and North of Maple Street.; (b) property bounded by Sycamore Street on the East, Maple Street on the South, Oak Street on the West and Texas Avenue on the North; (c) property bounded by Seneca Street on the West, University Avenue on the South, Walnut Street on the East and Texas Avenue on the North; (d) Property bounded by Seneca Street on the West, Pearl Street on the South, generally one-half block East of Osage Street on the East and McLean Boulevard on the North; (e) property bounded by Seneca Street on the East, 1st Street on the North, Dodge Avenue on the West and Texas Street on the South; and (f) property bounded by Dodge Avenue on the East, 1st Street on the North, generally Millwood Avenue/Vine Street on the West and on the South by Texas Street from

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Seneca Street to Martinson and one-half block south of Douglas from Martinson Street to Vine Street, all in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas. The legal description of the proposed district is attached hereto and incorporated herein as ***Attachment 1***.

SECTION 4: BUILDINGS AND FACILITIES

The district is located within the Historic Delano Neighborhood and includes property identified as a catalyst site for redevelopment. A majority of the buildings were constructed prior to 1950. The area includes Lawrence Dumont Stadium, a baseball stadium which has operated since 1934. In addition to the old structures and baseball stadium, the area includes large amounts of vacant and underdeveloped land. The proposed redevelopment district is an area that contains property: (a) previously designated as an enterprise zone prior to July 1992; (b) which has previously found by resolution of the City Council to be a slum or a blighted area under K.S.A. 17-4742 *et seq.*, and amendments thereto (the “Urban Renewal Law”); and (c) which has been determined by the City Council to be a “conservation area,” as said term is defined in the Act. Accordingly, such property is an “eligible area” as defined in the Act and is legally eligible for establishment of a redevelopment district.

SECTION 5: REDEVELOPMENT AND PROJECT AREAS

It is anticipated that all property within the district will be designated as the “project area” under the redevelopment project plan, which must be adopted by the City Council by a 2/3 majority vote before the expenditure of any tax increment financing funds; however, the City Council may create one or more project areas for future development. The plans for redevelopment of the project area generally call for a full remodel or replacement of the baseball stadium into a multi-sport athletic facility, development of vacant and underutilized land into multi-story mixed use developments including a hotel, apartments and retail, restaurant, and office space. It is further anticipated that the project will include construction of surface and multi-level parking facilities and enhancements of public recreation areas.

Tax increment financing may be used to pay for eligible costs, including site preparation, demolition, public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, pedestrian and bike paths and public plazas. Except as specifically provided by the Act, tax increment financing may not be used for construction of any buildings owned or leased to a private, nongovernmental entity.

SECTION 6: CONCLUSION

After the establishment of the redevelopment district, any redevelopment projects to be funded with tax increment financing will be presented to the Governing Body for approval through the adoption of a Redevelopment Project Plan. The Project Plan will identify the specific project area located within the established tax increment financing district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out-weigh the costs. The Project Plan must be reviewed by the Metropolitan Planning Commission to determine if the Project Plan is consistent with the intent of the comprehensive plan for development of the City. Thereafter, the Governing Body shall adopt a resolution calling a public hearing to consider the Project Plan notice of such hearing to be provided by mail and publication in accordance with the. After conclusion of the public hearing, the Project Plan may be approved by ordinance passed by not less than a two-thirds majority vote of the Governing Body. Tax increment financing does not impose any additional taxes on property located within the redevelopment district. All property within the district is appraised and taxed the same as any other property. However, if property within the district increases in value as a result of redevelopment, the resulting increment of additional tax revenue is diverted to pay for a portion of the redevelopment costs.

Map and Legal Description of Property to be Redeveloped

**LEGAL DESCRIPTION OF THE WEST BANK REDEVELOPMENT DISTRICT
(AS MODIFIED)**

An area including the following additions, lots and parcels all located in Wichita, Sedgwick County, Kansas:

Advanced Learning Library Addition; Sycamore Addition; EPC Real Estate Group, LLC Addition; Lot 27 on Oak Street, West Wichita Addition; Odd Lots 101 to 143 on Chicago, now Douglas Avenue, West Wichita Addition; The north six feet of the south ½ of vacated Pearl Street between Oak Street and Sycamore Street, West Wichita Addition; Hutton Addition; Odd lots 11 through 19 on Oak Street and ½ vacated Pearl Street on north, West Wichita Addition; Even lots 32 through 40 on Osage Street and ½ vacated Pearl Street on the north the east 10 feet of vacated Osage on the west, West Wichita Addition; Lot 42 on Osage Street and ½ of vacated Pearl Street on the south, West Wichita Addition; Odd lots 31 through 39 on Osage Street and the west 10 feet of vacated Osage on the east and ½ of vacated alley on west and the south 20 feet of vacated Pearl Street adjacent to Lot 39 on the north, West Wichita Addition; Even lots 32 through 40 on Wichita, now Handley Street and the east 10 feet of vacated Handley on the west and ½ of vacated alley on the east and the south 20 feet of vacated Pearl Street adjacent to Lot 40 on the north, West Wichita Addition; Odd lots 31 through 39 on Wichita, now Handley Street and ½ of vacated alley on west and the west 10 feet of vacated Handley on the east, West Wichita Addition; Even lots 12 through 20 on Walnut Street and ½ vacated alley on east, West Wichita Addition; Even lots 2 through 20 on Pearl Street, West Wichita Addition; Odd lots 1 through 99 on Chicago, now Douglas Avenue including a vacated alley between lots 29 and 31, a vacated alley between Lots 69 and 71, 10 feet of vacated Wichita, now Handley adjacent to Lots 39 and 41, and 10 feet of vacated Osage adjacent to Lots 59 and 61, West Wichita Addition; Even Lots 82 to 100 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 72 to 80 on Chicago, now Douglas Avenue and ½ of vacated alley on south and ½ of vacated alley adjacent to Lot 72, West Wichita Addition; Even Lots 12 to 30 on Osage Street and the east 10 feet of vacated Osage on the west and half of vacated alley adjacent to the east and the vacated alley between Lots 20 and 22; East 50 feet of the north 125 feet of Reserve “E” plus 10 feet of vacated Osage Street on the east, West Wichita Addition; Kelch’s Resurvey of a portion of Reserve “E” in West Wichita Addition including the vacated alley therein; Odd lots 11 through 29 on Wichita, now Handley Street and the west 10 feet of vacated Handley on the east and ½ of vacated alley adjacent on west adjacent to Lots 21 through 29, West Wichita Addition; Even Lots 2 to 30 on Chicago, now Douglas Avenue and ½ of vacated alley adjacent to Lot 30 on east, West Wichita Addition; Lawrences’ Subdivision of Lots 1, 3, 5, 7 and 9 on Texas in West Wichita Addition and the north 10 feet of vacated Texas Street adjacent to the east ½ of Lot 5 thereof; Odd lots 11 through 29 on Texas Avenue, West Wichita Addition; Minnich & Jones Subdivision in Reserve “E” in West Wichita Addition; East 75 feet of the south 125 feet of Reserve “E” plus 10 feet of vacated Osage Street on the east, West Wichita Addition; Odd Lots 71 to 79 on Texas Avenue and ½ of vacated alley on north and ½ of vacated alley adjacent to Lot 71, West Wichita Addition Odd Lots 81 to 99 on Texas Avenue, West Wichita Addition; Even Lots 102 to 140 and the West 5 feet of Lot 142 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 144 to 160 and the East 20 feet of Lot 140 and the vacated alley adjacent on the South on Chicago, now Douglas Avenue, West Wichita Addition; Reserve A, West Wichita Addition except that part lying east of the center line of the railroad right-of-way and except the northwest 10 feet taken for alley and except that part replatted as part of Payne’s Park Addition; Payne’s Park Addition; that part of the Southwest ¼ of Section 20-Township 27-Range 1 East of the 6th P.M. lying South of Reserve A, West Wichita Addition and East of Payne’s Park Addition and lying north of the South line of Lot 9, Block 6, Payne’s Park Addition extended

East to the center line of the railroad right-of-way and except that part dedicated for street; Wichita Ice Center Addition;

All property located in Wichita, Sedgwick County, Kansas, platted or non-platted, located West of the high bank of the Arkansas River and East of the center line of McLean Boulevard, South of Douglas Avenue and North of Maple Street; McKee's Resurvey of Even Lots 90 to 100 on Texas Avenue and Even Lots 2 to 10 on Oak Street in the West Wichita Addition; Even Lots 82 to 88 on Texas Avenue, West Wichita Addition; Odd Lots 91 to 99 on Pine now Burton Street, West Wichita Addition; Slaven's Addition; Even Lots 2 to 20 on Texas Avenue, West Wichita Addition; Odd Lots 1 to 19 on Pine now Burton Street, West Wichita Addition; Lots 1 to 26 and Odd Lots 27 to 45, Stanton's Addition; Lots 2 and 3, Block 1, except parts dedicated for street, Lawrence's Addition; the west ½ of Lot 49 and Lots 51 and 53 on Maple Street and ½ vacated alley on the south, Campbell's Subdivision in Lawrence's Addition; Reserve E, Campbell's Subdivision in Lawrence's Addition; Lots 2 and 3, Block 6, except the west 7.5 feet for street, Lawrence's Addition; the West 59.5 feet of Lot 1, Block 6, Lawrence's Addition; the West 60 feet of Lot 4, Block 6, Lawrence's Addition; Key Construction Addition; a parcel beginning 400 feet south and 10 feet west of the intersection of Osage Avenue and 2nd Street thence South to the north line of Lot 72 on Osage Street, West Wichita Addition, thence East 163 feet along the north line of Lot 72, thence north to a point 163 feet east of the point of beginning, thence west to the point of beginning; Even Lots 42 to 72 and 30 foot of vacated Osage Avenue on the west, ½ vacated Pearl Street on the south and ½ of the vacated alley on the east of even Lots 52 to 72, West Wichita Addition; Even Lots 42 to 70 on Wichita now Handley Street, 10 feet of vacated street on the west and ½ of the vacated alley on the east, West Wichita Addition; Odd Lots 41 to 71 on Osage Avenue, 10 feet of vacated street on the east and ½ of the vacated alley on the west, West Wichita Addition; Odd Lots 41 to 71 on Wichita, now Handley Street and ½ of the vacated alley on the west, West Wichita Addition; Even lots 22 to 42 on Walnut Street and ½ of the vacated alley on the east, West Wichita Addition; Blackmon Addition; Odd Lots 21 to 51 on Walnut Street and ½ of the vacated alley on the west, West Wichita Addition; Even Lots 22 to 52 on Seneca Street and ½ of the vacated alley on the east, West Wichita Addition; Even Lots 54 to 90 on Seneca Street, Niederlander's Addition to West Wichita; Odd Lots 53 to 89 on Walnut Street, Niederlander's Addition to West Wichita; Even Lots 54 to 90 on Walnut Street, Niederlander's Addition to West Wichita; Odd Lots 53 to 89 on Wichita, now Handley Street, Niederlander's Addition to West Wichita; Even Lots 74 to 110 on Wichita, now Handley Street and ½ of the vacated alley on the east, Niederlander's Addition to West Wichita; Odd Lots 73 to 109 on Osage Street, ½ of the vacated alley on the west and 20 feet of vacated street on the east, Niederlander's Addition to West Wichita; Even Lots 92 to 116 on Seneca Street, Niederlander's Addition to West Wichita; Odd Lots 91 to 115 on Walnut Street, Niederlander's Addition to West Wichita; Even Lots 92 to 116 on Walnut Street, Niederlander's Addition to West Wichita; Odd Lots 91 to 115 on Wichita, now Handley Street, Niederlander's Addition to West Wichita; Even Lots 112 to 132 on Wichita, now Handley Street and ½ of the vacated alley on the east, Niederlander's Addition to West Wichita; Lots 134 and 136 on Wichita, now Handley Street and ½ of the vacated alley on the east, less that part taken for McLean Boulevard, Niederlander's Addition to West Wichita, Odd Lots 111 to 125 on Osage Avenue, ½ of the vacated alley on the west and the west 55 foot of vacated street on the east, Niederlander's Addition to West Wichita; Odd Lots 127 to 133 on Osage Avenue, ½ of the vacated alley on the west, the west 55 foot of vacated street on the east, less that part taken for McLean Boulevard, Niederlander's Addition to West Wichita; a tract in Reserve C, Niederlander's Addition to West Wichita, Sedgwick County, Kansas, described as follows: Beginning at the intersection of the North line of Second Street and the East line of Osage Avenue; thence North 150 feet; thence East at right angles to Osage Avenue to a point 9 feet West of the center line of team track; thence South along a line 9 feet West of the center line and parallel to said team track to the North line of Second Street; thence West along the North

line of Second Street, 165 feet more or less to the place of beginning along with the East 45 feet of vacated Osage Street adjacent to the West; a tract in Reserve C, Niederlander's Addition to West Wichita, Sedgwick County, Kansas, described as follows: Beginning 150 feet north of the North line of Second Street and the East line of Osage Avenue; thence North 342.15 feet; thence Southeast to a point 164.4 feet east of the point of beginning; thence West to the point of beginning along with the East 45 feet of vacated Osage Street adjacent to the West and except McLean Boulevard right-of-way and except that part platted as Exploration Place Addition; a tract in Reserve C, Niederlander's Addition to West Wichita, Sedgwick County, Kansas, described as follows: Beginning at the North line of Second Street 330.25 feet east of Osage Avenue; thence Northwest along the industry track to a point 12 feet south and west of the main line track; thence westerly to a point 9 feet east of the team track; thence south along the team track to the north line of Second Street; thence east 146 feet more or less to the point of beginning except McLean Boulevard right-of-way and except that part platted as Exploration Place Addition; a tract in Reserve C, Niederlander's Addition to West Wichita, Sedgwick County, Kansas, described as follows: Beginning at the North line of Second Street 12 foot west of the main line right-of-way; thence northwest along the main line right-of-way to a point 9 feet east of the industry track; thence south along the tract to the north line of Second Street; thence east 200 feet more or less to the point of beginning except McLean Boulevard right-of-way and except that part platted as Exploration Place Addition; Martinson's 3rd Addition including all vacated alleys therein; Supplemental Plat to Martinson's 1st Addition to West Wichita and railway lying within said addition; Odd Lots 41 to 79 on Chicago now Douglas Avenue, Martinson's 4th Addition; Lots 5, 7 and 9 on Exposition Avenue, Martinson's 4th Addition; Lots 6, 8 and 10 on Martinson Avenue, Martinson's 4th Addition; Lots 15 and 17 on Exposition Avenue, Lawrence's 3rd Addition; Lots 16 and 18 on Martinson Avenue, Lawrence's 3rd Addition; Braum's 1st Addition; Odd Lots 21 to 29 on Dodge Avenue, Martinson's 2nd Addition; Odd Lots 31 to 37 on Dodge Avenue, Martinson's Sixth Addition; Even Lots 22 to 30 on Exposition Avenue, Martinson's 2nd Addition; Even Lots 32 to 38 on Exposition Avenue, Martinson's Sixth Addition; Odd Lots 21 to 29 on Grand, now First Street, Martinson's 2nd Addition and railroad right-of-way lying south of said lots; Lots 21, 23 and 25 on Exposition Avenue, Martinson's 2nd Addition; Even Lots 20 to 26 on Martinson Avenue, Martinson's 2nd Addition; Odd Lots 31 to 39 on Grand now First Street and railroad right-of-way lying south to said lots, Martinson's 2nd Addition; Lots 1 to 12, Block 9, Junction Town Company Addition; Lots 1 to 12, Block 10, Junction Town Company Addition; Lots 1 to 11 and Lot 39, Block 11, Junction Town Company Addition; Lots 19 to 30, Block 6, Junction Town Company Addition; Blocks 7 and half of vacated street on the north, Junction Town Company Addition; Lots 22 to 28 inclusive, Block 2 and half of vacated street on the south, Junction Town Company Addition; Block 8, and abandoned railroad right-of-way lying within, Junction Town Company Addition.

Even Lots 118 to 148 on Seneca Street and 40 feet of vacated Cedar Street adjacent to Lot 148 on the north, Niederlander's Addition to West Wichita; Odd Lots 117 to 147 on Walnut Street and 40 feet of vacated Cedar Street adjacent to Lot 147 on the north, Niederlander's Addition to West Wichita; Even Lots 118 to 148 on Walnut Street, Niederlander's Addition to West Wichita; Odd Lots 117 to 147 on Handley Street except that part taken for McLean Boulevard, Niederlander's Addition to West Wichita; Lots 150 and 152 and 40 feet of vacated Cedar Street adjacent to Lot 150 on the south, Ford's 6th Addition; Lots 154, 156 and 158 except that part taken for McLean Boulevard and Seneca Street right-of-way, Ford's 6th Addition; That part of Lots 149 and 151 lying south of a line beginning 5 feet south of the northwest corner of Lot 151 and extending southeasterly to a point 6 feet south of the northeast corner of Lot 149 and 40 feet of vacated Cedar Street adjacent to Lot 149 on the south, Ford's 6th Addition.

The above includes any vacated or abandoned streets, alleys, rights of way or rail corridors contiguous and attaching to any of the described parcels as well as all public streets and rights of

way contiguous to the above described parcels including parcels condemned in CC A-60844; and any portions of the Big Arkansas River lying contiguous to the above described parcels.

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**MAP OF WEST BANK REDEVELOPMENT DISTRICT
AND PROJECT AREA**



EN 600809.70449 ORDINANCE - JIF DISTRICT CREATION (04-03-17)

Relocation Assistance Plan

RELOCATION ASSISTANCE PLAN

(K.S.A. 12-1777)

Assistance for the relocation of persons, families or businesses from property acquired in conjunction with the Delano and Stadium Project is not required. No persons or families will be displaced as a result of the Project and no tenants will be relocated other than within the Project boundaries.

Description of Delano and Stadium Project

West Bank Redevelopment District

DESCRIPTION OF PROPOSED PROJECT PLAN

Due to changes in the size and scope of development within the project area, the need for additional parking and infrastructure to support the development has created a need to amend the project plan.

The Project Area encompasses the entire West Bank Redevelopment District (the “District”) and includes portions of the Historic Delano Neighborhood. Within the Project Area, the City has constructed a new Advanced Learning Library and has sold property south and east of the Advanced Learning Library for a mixed-use development (the “Delano Catalyst Site”). The Project to be financed by tax increment financing (the “Project”) consists of a replacement of the existing Lawrence Dumont Stadium (the “Stadium”), a multi-modal path and greenspace, sitework and construction of parking, and infrastructure improvements.

Lawrence Dumont Stadium

The City announced plans to substantially rehabilitate the Stadium into a multi-sport athletic complex in the adopted plan, which is now complete. Revitalization of the Stadium is expected to be a catalyst for the redevelopment of nearby property and attracted an affiliated Minor League Baseball team to the City, the Windsurge. The Project Area contains areas of vacant and underutilized land surrounding the Stadium that is anticipated to be developed into a mixed-use development containing ground floor retail and office with residential and office development occurring on upper floors.

Sitework and Infrastructure Improvements

Greenway/multi-modal path

The Project will include completion of a multi-modal path south of the Delano Catalyst Site, extending from McLean Boulevard on the east to Millwood Avenue on the west. This Greenway is part of a multi-modal plan extending further west within the Historic Delano Neighborhood. This path will connect pathways along the Arkansas River to west Wichita. The stadium is now complete and is anticipated to be funded with tax increment financing.

Infrastructure Improvements

The Project anticipated improvements to McLean Boulevard to accommodate the improvement of the Stadium and the redevelopment of the surrounding area that will occur. Improvements created a boulevard feel

that slows traffic and allows conversion of McLean Boulevard to a pedestrian venue for events. This construction is now complete and anticipated to be funded with tax increment financing. The City has completed some infrastructure improvements in relation to the stadium development and intends to make additional various road improvements, water and sewer relocations or enhancements, pedestrian walkway improvements and landscaping and other amenities are contemplated within the project area to be funded by TIF.

Parking

As development progresses, the Project is anticipated to provide additional parking within the Project Area. The Project will include removal of existing surface parking in and around the Stadium and the construction of structured and surface parking. These parking facilities are anticipated to be constructed as needed within the Project Area.

USE OF TAX INCREMENT FINANCING

The City completed the legal steps necessary to establish the District pursuant to state law (K.S.A. 12-1770 *et seq.*) in order to allow the use of Tax Increment Financing (“TIF”) to fund redevelopment projects including the Stadium, site work and infrastructure improvements described above. Upon adoption of this Project Plan, the City will have established its authority under state law to issue full-faith and credit tax increment bonds (the “Bonds”) to finance TIF-eligible improvements, which Bonds will be repaid from the incremental increase in property taxes resulting from the redevelopment of the Project Area. Incremental tax revenue available after the payment of such Bonds may also be used to reimburse the City or pay for TIF-eligible project costs identified in this Project Plan not financed with Bonds. The TIF-funded improvements consist of the following:

- **Stadium construction** – The City will undertake the rehabilitation or replacement of the Stadium, at an estimated cost of \$8,000,000.
- **Greenway and Multi Modal Path** – The City will undertake design and construction of the greenway/multi-modal path at an estimated cost of \$3,000,000.
- **Road and Infrastructure Improvements** – The City will design and construct improvements to McLean Boulevard and related infrastructure at an estimated cost of \$10,000,000.
- **Parking** – The City will undertake the parking improvements as described above at an estimated cost of \$15,000,000
- **Land Acquisition** – \$1,500,000
- **Contingency** - \$1,500,000
- **Financing and other costs** - \$1,000,000
- **Total TIF-funded costs (excluding financing costs)** - \$40,000,000.
 - **TIF Bond Financed Project Costs** -- \$24,000,000
 - **TIF Pay-as-you-go Costs** -- \$16,000,000

ORDINANCE NO. 51-749

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS ADOPTING A REDEVELOPMENT PROJECT PLAN AMENDMENT FOR THE WEST BANK REDEVELOPMENT DISTRICT WITHIN THE CITY.

WHEREAS, the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”) desires to promote, stimulate and develop the general and economic welfare of the City and the state of Kansas (the “State”) and to assist in the development and redevelopment of eligible areas within the City, thereby promoting the general welfare of the citizens of the State and the City, by acquiring property and providing for the development and redevelopment thereof and the financing relating thereto; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1770, *et seq.*, as amended (the “Act”), and Ordinance No. 50-434, passed April 18, 2017, and published April 21, 2017, the City established a redevelopment district pursuant to the Act designated as the “West Bank Redevelopment District” (the “District”) and approved the District Plan for the District (the “District Plan”), and

WHEREAS, the City prepared the Delano and Stadium Project Plan for the District, dated June 8, 2017 (the “Project Plan”); and

WHEREAS, on June 8, 2017, the Wichita-Sedgwick County Metropolitan Area Planning Commission reviewed the Project Plan and adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, by Ordinance No. 50-561, passed July 25, 2017, and published July 28, 2017, the City adopted the Project Plan for the District; and

WHEREAS, in accordance with the provisions of the Act, a copy of the Project Plan was delivered by the City to the Board of County Commissioners of Sedgwick County, Kansas and to the Board of Education of U.S.D. No. 259, Sedgwick County, Kansas (Wichita); and

WHEREAS, by Ordinance No. 51-164, passed December 17, 2019, and published December 20, 2019, the City added certain property and increased the boundaries of the District pursuant to K.S.A. 12-1771(f) and made a substantial change to the District Plan for the District; and

WHEREAS, the Act, particularly K.S.A. 12-1772(f), authorizes the Governing Body to approve substantial changes to the Project Plan, subject to public hearing, notice of which is provided by publication at least twice in the official City newspaper; and

WHEREAS, the City has prepared a Project Plan Amendment for the District, dated as of April 2022 (the “Project Plan Amendment”), which modifies the scope of the public improvements described in the Project Plan and provides that the City may issue additional full faith and credit tax increment bonds to finance (the “Bonds”), in whole or in part, the costs to finance projects previously described in the Project Plan and the proposed Project Plan Amendment, and is considering adoption of the Project Plan Amendment; and

WHEREAS, on April 19, 2022, after providing notice required by the Act, a public hearing on the Project Plan Amendment was opened, public comment was received by the Governing Body and the public hearing was closed; and

WHEREAS, the Governing Body is authorized by the Act to adopt the Project Plan Amendment by ordinance passed by not less than two-thirds vote of the Governing Body.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Project Plan Amendment Approval. The Project Plan Amendment for the redevelopment of the District, together with all attachments and exhibits thereto, which is on file in the office of the City Clerk, is hereby adopted.

Section 2. Financing Authorization. The Governing Body hereby declares its intention to issue and sell the Bonds in order to implement the Project Plan Amendment. The Bonds may be issued to reimburse the City for such project costs pursuant to Treasury Regulation §1.150-2.

Section 3. Notification. The City Clerk shall cause to be transmitted copies of this Ordinance and the Project Plan Amendment to the Sedgwick County Board of County Commissioners, Clerk, Treasurer and Appraiser and to the Board of Education of Unified School District No. 259 (Wichita).

Section 4. Further Action. The Mayor, City Manager, Director of Finance, City Clerk, City Attorney and other officials, agents and employees of the City, including Gilmore & Bell, P.C., Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

Section 5. Effective Date. This Ordinance shall be effective upon its passage by the Governing Body of the City and publication of the Ordinance or a summary one time in the official City newspaper.

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PASSED by not less than two-thirds vote the City Council of the City on April 26, 2022 and **SIGNED** by the Mayor.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

ORDINANCE NO. 51-750

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WICHITA, KANSAS AND WICHITA RIVERFRONT LP AND EPC REAL ESTATE GROUP LLC, AS DEVELOPER; AUTHORIZING THE EXECUTION OF OTHER DOCUMENTS RELATED THERETO; AND AUTHORIZING THE ISSUANCE OF BONDS TO FINANCE CERTAIN COSTS RELATED THERETO.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, the City and Wichita Riverfront LP, a Delaware limited partnership, and EPC Real Estate Group LLC, a Kansas limited liability company (collectively, the “Developer”) have negotiated the terms of a Phase One Development Agreement, dated as of April 29, 2022 (the “Development Agreement”) and certain other documents relating to the development and construction of a mixed hotel, office, retail, and commercial development north of the intersection of McLean Boulevard and Maple Street in the vicinity of the Riverfront Stadium (collectively, the “Project”); and

WHEREAS, the construction of the Project will stimulate and foster economic development in the City and its environs in order to enhance and provide for the general and economic development and welfare of the City and its citizens, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the Constitution, particularly Article 12, Section 5 thereof, and statutes of the State of Kansas, particularly of K.S.A. 12-101 *et seq.*, as amended (collectively, the “Home Rule Act”), K.S.A. 12-1740 *et seq.* (the “IRB Act”), and K.S.A. 13-1017, as amended by Charter Ordinance No. 228 of the City, the Governing Body hereby finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that the City: (a) enter into the Development Agreement; and (b) authorize the issuance of bonds of the City, in one or more series, pursuant to the IRB Act, all as described in and in the amounts set forth in the Development Agreement (the “Bonds”); and

WHEREAS, the Governing Body hereby further finds and determines that it is necessary and advisable and in the interest of the public health, safety and welfare, including economic development, of the City, to authorize by home rule ordinance the execution of the Development Agreement and other related documents and authorize the issuance of the Bonds to provide funds to pay a portion of the costs of the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Economic Development. The Governing Body hereby finds and determines that the Project will stimulate and foster economic development in the City and its environs in order to enhance and provide for the general and economic development and welfare of the City and its citizens and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Project Documents. The Development Agreement is hereby approved in substantially the form presented to the Governing Body with such alterations, changes or additions as may be approved by the City Manager and as to form by the City Attorney. The Mayor or Vice Mayor of the City is hereby authorized and directed to execute the Development Agreement and such other documents, statements, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and as described in the Development Agreement (together with the Development Agreement, collectively, the "Project Documents") in such final form as are approved by the City Manager, or designate, and as to form by the City Attorney, and the execution or taking of such actions shall be conclusive evidence of such form, necessity or advisability. The City Clerk or any Deputy City Clerk is hereby authorized to attest to and affix the seal of the City to the Project Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this

Section 3. IRB Financing Authorization. The City is hereby authorized to proceed with the acquisition, construction and equipping of a portion of the Project and to issue its industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$40,000,000 (the "Bonds") to pay the costs thereof as more particularly set forth in the Development Agreement, subject to satisfaction of the conditions of issuance set forth herein. The issuance of the Bonds is subject to: (a) the Developer's or authorized assignees' (collectively, the "Developer") written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds in accordance with the City's Economic Development Incentive Policy (the "Letter of Intent"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Developer and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Developer and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Developer and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (e) the commitment to and payment by the Developer or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (f) compliance with other provisions of the Development Agreement. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Ordinance and the Letter of Intent to the Developer. After the Developer has demonstrated compliance with the provisions of the Letter of Intent and the Development Agreement, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Developer for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 4. Sales Tax Exemption. The Governing Body hereby further determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the portion of the Project financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Developer will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 5. Further Authority. The City shall, and the officers, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments, as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Project Documents including, but not limited to: (a) cooperate with the Developer in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the City of

the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

Section 6. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication of a summary thereof one time in the official City newspaper.

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PASSED by not less than two-thirds vote of the City Council of the City of Wichita, Kansas, on April 26, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

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PHASE ONE DEVELOPMENT AGREEMENT

between the

CITY OF WICHITA, KANSAS,

and

WICHITA RIVERFRONT LP

and

EPC REAL ESTATE GROUP LLC

Dated as of [Dated Date]

DEVELOPMENT AGREEMENT

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01.	Definitions of Words and Terms	2
Section 1.02.	Rules of Construction	5

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01.	Representations of the City	6
Section 2.02.	Representations of the Developer	7
Section 2.03.	Conditions to the Effective Date of this Agreement	8
Section 2.04.	Maintenance of Existence	8

ARTICLE III

DEVELOPMENT OF THE PROJECT

Section 3.01.	Cost of the Phase One Project.....	8
Section 3.02.	Design of the Phase One Project.....	9
Section 3.04.	Project Milestones.....	9
Section 3.05.	Construction of the Phase One Project.	9
Section 3.06.	Construction Plans.	10
Section 3.07.	Construction Permits and Approvals.	10
Section 3.08.	No Waiver.	10
Section 3.09.	Certificate of Substantial Completion.....	10
Section 3.10.	Covenant for Non-Discrimination.	10
Section 3.11.	Operation of Phase One Project.	11
Section 3.12.	Hotel Provisions.....	11
Section 3.13.	Land Use Restrictions.....	11
Section 3.14.	Relocation Restrictions.	11
Section 3.15.	Payment of Taxes.....	11
Section 3.16.	Utilities to the Phase One Property.	12

ARTICLE IV

PARKING AND INFRASTRUCTURE MATTERS

Section 4.01.	Phase One Parking Garage Easement.	12
Section 4.02.	Use of Phase One Parking Garage/Parking Easement.	12
Section 4.03.	Redesign of McLean Boulevard.	12
Section 4.04.	Pedestrian Bridge.....	12
Section 4.05.	Skybridges.	12

ARTICLE V
CITY PROGRAMS

Section 5.01.	TIF.....	13
Section 5.02.	BASE/ARPA Funding.....	13
Section 5.03.	No STAR Revenues, CID Revenues, or Additional TIF Revenues.	13
Section 5.04.	Industrial Revenue Bonds.....	13

ARTICLE VI
TIF FINANCING

Section 6.01.	TIF Fund.	14
Section 6.02.	Pay-as-you-go Financing of TIF Eligible Costs.....	14
Section 6.03.	Certification of TIF Expenditures.....	15
Section 6.04.	Reimbursement.	15
Section 6.05.	Tax Valuation Contest Restrictions.	16

ARTICLE VII
INDEMNITY

Section 7.01.	Indemnification of City.....	16
Section 7.02.	Insurance.....	17

ARTICLE VIII
DEFAULTS AND REMEDIES

Section 8.01.	Defaults – General.	18
Section 8.02.	Default Proceedings.....	18
Section 8.03.	Remedies on Default.....	18
Section 8.04.	Legal Actions.....	19
Section 8.05.	Rights and Remedies are Cumulative.....	19
Section 8.06.	Inaction Not a Waiver of Default.....	20
Section 8.07.	Enforced Delay; Extension of Times of Performance.	20

ARTICLE IX
GENERAL PROVISIONS

Section 9.01.	Amendment.....	20
Section 9.02.	Assignment.....	20
Section 9.03.	Right to Inspect.....	21
Section 9.04.	Right of Access.....	22
Section 9.05.	No Other Agreement.....	22
Section 9.06.	Severability.....	22
Section 9.07.	Notice.....	22
Section 9.08.	Counterparts.....	23
Section 9.09.	Consent or Approval.....	23

Section 9.10.	Survival.....	23
Section 9.11.	Incorporation of Exhibits.....	23
Section 9.12.	Mutual Assistance.....	23
Section 9.13.	Effect of Violation of the Terms and Provisions of this Agreement; No Partnership.....	23
Section 9.14.	Time of Essence.....	24
Section 9.15.	Conflicts of Interest.....	24
Section 9.16.	Required Disclosures.....	24
Section 9.17.	Tax Implications.....	24
Section 9.18.	Authorized Parties.....	24
Section 9.19.	Electronic Transactions.....	24
Section 9.20.	Cash Basis and Budget Laws.....	25
Section 9.21.	Effective Date.....	25
Section 9.22.	Termination Date.....	25
Exhibit A	Legal Description and Map of Private Development Site	
Exhibit B	Legal Description and Map of Phase One Property	
Exhibit C	Site Plan	
Exhibit D	Phase One Project Budget	
Exhibit E	Project Milestones	
Exhibit F	Form of Certificate of Substantial Completion	
Exhibit G	Hotel Flag Requirement Examples	
Exhibit H	Land Use Restrictions	
Exhibit I	Form Phase One Parking Garage Construction Easement	
Exhibit J	Form of Phase One Parking Garage Public Parking Easement	
Exhibit K	Form of Certification of TIF Expenditures	
Exhibit L	Form of IRB Letter of Intent	

PHASE ONE DEVELOPMENT AGREEMENT

THIS PHASE ONE DEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into as of [Dated Date], by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”), **WICHITA RIVERFRONT LP**, a Delaware limited partnership (WRLP) and **EPC REAL ESTATE GROUP LLC**, Kansas limited liability company (EPC). WRLP and EPC are herein referred to individually and collectively as the “**Developer**” (the Developer and the City are collectively referred to as the “**Parties**” and each a “**Party**”).

RECITALS

A. WRLP entered into that certain Development Agreement with the City dated March 20, 2019 (the “**2019 Development Agreement**”); and

B. WRLP has exercised the option available to it pursuant to the 2019 Development Agreement to purchase Lots A, B and C as described in the 2019 Development Agreement and is pursuing closing on the sale of those parcels. WRLP has also extended, by payment of the option price, the ability at any time within the next ten (10) years to close on the sale and take possession of the balance of the approximately 4 acres of developable land from the City in the vicinity of Riverfront Stadium (the “**Private Development Site**” as further described in the Development Agreement) and legally described and depicted on the attached *Exhibit A*; and

C. The City and WRLP will enter into an amendment to the 2019 Development Agreement to modify the developmental benchmarks contained in that agreement to conform to the accelerated development planned by Developer as reflected in *Exhibit E* to this Agreement; and

D. The City and the Developer desire to enter into this Agreement for the development of the property legally described and depicted on the attached *Exhibit B* (the “Phase One Property”) in the following manner:

- construction of a minimum 105,000 square feet, with an anticipated 160 but not less than 155 guest room hotel with a ground floor restaurant and/or rooftop bar/eatery; construction of an anticipated 111,570 but not less than 80,000 square feet of Class A office and a minimum 15,000 square feet of ground floor retail space; and
- construction of a parking structure with an anticipated 283 but not less than 260 stalls.

E. So long as the Developer remains in compliance with this Agreement, the City agrees to permit the Phase One Project to participate in certain City programs as more particularly set forth in this Agreement, including:

- the use of certain proceeds generated by the tax increment financing district encompassing the Phase One Property, including up to \$8,683,400 in tax increment financing pay-as-you-go proceeds;
- the issuance of industrial revenue bonds for purposes of a sales tax exemption for the Phase One Office Building, Phase One Parking Garage, and associated infrastructure and sitework;
- Developer design of certain riverfront improvements, in coordination with the City; and
- City funding of up to \$3,000,000 for riverfront improvements in the event State BASE (ARPA) funds cannot be secured by the Developer.

F. The purpose and intent of the agreements of the Parties set forth in this Agreement is to provide for substantial and long-lasting improvement of the character of the Phase One Property that will contribute to the revitalization, growth and economic development of the City and the Stadium area.

G. The Parties now desire to enter into this Agreement to formalize the construction and financing of the improvements to the Phase One Property for the purposes described herein.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms. Capitalized words used in this Agreement have the meanings set forth in the Recitals to this Agreement or they have the following meanings:

“Action” means any suit, action, investigation, claim or proceeding.

“Affiliate Entity” means any person, entity or group of persons or entities which controls Developer, which Developer controls or which is under common control with Developer. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“Approving Resolution” means the Resolution adopted by the Governing Body approving the execution of this Agreement.

“Ballpark Village Master Plan” means the special zoning district established as the PUD that overlays, in part, the Phase One Property.

“Certificate of Substantial Completion” means a certificate in substantially the form attached as *Exhibit F* hereto furnished by the Developer and approved by the City pursuant to this Agreement upon completion of the Phase One Project.

“Certification of TIF Expenditures” is the form attached as *Exhibit K*.

“City” means the City of Wichita, Kansas.

“City Attorney” means the Director of Law and City Attorney of the City, or in the absence of the City Attorney any duly appointed Deputy, Assistant or Acting City Attorney.

“City Building Code” means the Wichita/Sedgwick County Unified Building and Trade Code, or any successor thereto in effect in the City during construction of the Phase One Project.

“City Engineer” means the City Engineer of the City, or in the absence of the City Engineer any duly appointed Deputy, Assistant or Acting City Engineer.

“City Indemnified Parties” means City’s Governing Body members, City employees, and City agents to the extent engaged by the City to perform work directly upon the Phase One Project described in this Agreement.

“City Manager” means the City Manager of the City, or in the absence of the City Manager any duly appointed Deputy, Assistant or Acting City Manager.

“City Representative” means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.

“Claimant” shall mean any Party claiming a default in accordance with **Article VIII** of this Agreement.

“Commencement of Construction” shall mean filing an application for at least one footings and foundation permit and implementation of temporary fencing and signage announcing forthcoming construction of the Phase One Project.

“Construction Plans” means the plans, drawings, specifications and related documents, and construction schedules for the construction of each component of the Phase One Project, together with all supplements, amendments or corrections approved by the City.

“Delano Neighborhood Plan” means the Delano Neighborhood Plan, which includes the Ballpark Village Master Plan as one of its components, setting compatible uses, design standards and themes within the PUD.

“Developer” means, individually and collectively, Wichita Riverfront LP and EPC Real Estate Group LLC for purposes of the Phase One Project only. For purposes of clarity, EPC Real Estate Group LLC is not a party to the 2019 Development Agreement and is not the “Developer” in connection with said agreement.

“Downtown Development Incentives Policy” means Downtown Development Incentives Policy, as most recently approved by the Governing Body pursuant to Resolution No. 14-160 adopted on June 10, 2014 and as amended from time-to-time thereafter.

“Effective Date” means [Dated Date].

“Event of Default” shall have the meaning set forth in **Article VIII** of this Agreement.

“Excusable Delays” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, earthquake, power failure, strike, pandemic, endemic, quarantine restrictions, lockdown, shortage of materials, unavailability of labor, delays in construction of nearby public streets, roads, right-of-way, interstate or highway, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any action or inaction of any Party to this Agreement or other governmental body (including any designees of the foregoing) and any litigation interfering with or delaying the construction of all or any portion of the Phase One Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Governing Body” means the Mayor and City Council of the City.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar governmental permits, licenses, or approvals required by applicable law for the implementation of the Phase One Project.

“Hotel Flag Requirement” means a full service or select service hotel that meets the requirements established by Smith Travel Research within its Upscale Hotel sector. In the event that such publication is no longer in existence such other comparable rating guide as may be agreed upon by the City and Developer may be substituted. Examples of franchisors which currently meet the Hotel Flag Requirement are Aloft, Courtyard, DoubleTree, Four Points, Great Wolf Lodge, Hilton Garden Inn, Hyatt House, Hyatt Place, Radisson, and Springhill Suites.

“IRB” or **“IRBs”** means the industrial revenue bonds to be issued pursuant the IRB Act in accordance with the provisions of **Article V** hereof.

“IRB Act” means K.S.A. 12-1740 *et seq.*, as amended and supplemented.

“Letter of Intent” means the letter of intent to issue the IRB substantially in the form set forth on *Exhibit L* hereto.

“Phase One Hotel” means an anticipated 8, but not less than 6, floor newly constructed full-service hotel located on the Phase One Property and containing (a) an anticipated 160 but not less than 155 guest rooms; (b) a minimum 105,000 square feet of constructed space; (c) a ground floor restaurant and/or rooftop bar/eatery; and (d) meeting the Hotel Flag Requirement.

“Phase One Office Building(s)” means newly constructed office building(s) located on the Phase One Property containing (a) an anticipated 111,570 but not less than 80,000 square feet of Class A office space; and (b) a minimum 15,000 square feet of ground floor retail space.

“Phase One Parking Garage” means a multi-level parking facility constructed by Developer on the Phase One Property containing an anticipated 283 but not less than 260 parking stalls.

“Phase One Parking Garage Construction Easement” means the Phase One Parking Garage Construction Easement to be entered into between the Developer and the City in the form attached as *Exhibit I*.

“Phase One Parking Garage Public Parking Easement” means the Phase One Parking Garage Public Parking Easement to be entered into between the Developer and the City in the form attached as *Exhibit J*.

“Phase One Project” means the redevelopment of the Phase One Property through the design, engineering, constructing, reconstructing, furnishing, and equipping of the Phase One Hotel, the Phase One Office Building, the Phase One Parking Garage, public plazas and walkways, and certain other improvements to the Phase One Property.

“Phase One Project Budget” means the budget for the Phase One Project attached as *Exhibit D*.

“Phase One Property” means the property legally described and depicted on *Exhibit B*.

“Phase One Tax Increment Funds” means 100% of the funds actually paid to the City by the Sedgwick County Treasurer as incremental property taxes produced by the Phase One Property, pursuant to the TIF Act.

“Phase One TIF Eligible Costs” means all Phase One Project costs in an amount that does not exceed the Phase One TIF Eligible Costs Cap which are eligible for payment or reimbursement under the TIF Act and are identified in the Phase One Project Budget, including but not limited to the Phase One Parking Garage costs, site preparation costs, and infrastructure costs.

“Phase One TIF Eligible Costs Cap” means \$8,683,440, as more particularly set forth on the Phase One Project Budget.

“Principal Component” means the Phase One Hotel, the Phase One Office Building(s) or the Phase One Parking Garage.

“Principals” means Terrence P. O’Leary, Michael J. McKeen, Brendon P. O’Leary and Austin Bradley and any other entities or persons having an ownership or equity position in a Developer or any Affiliate Entity in excess of 20%.

“Project Approvals” means all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to operate and maintain the Phase One Project.

“Project Milestones” means the performance of the Phase One Project described on *Exhibit E*.

“Private Development Site” means the real property described on *Exhibit A* hereto.

“Site Plan” means the drawings, renderings, elevations and plans depicting the conceptual appearance of the Phase One Project, attached as *Exhibit C*.

“State” means the State of Kansas.

“Tax Increment” means the difference between the amount of real property taxes collected within the TIF District attributable to the Phase One Property and the Base Year property taxes specified for the TIF District attributable to the Phase One Property in this Agreement, pursuant to the TIF Act.

“Term” means the term of this Agreement commencing on the Effective Date and, unless terminated earlier as provided in this Agreement, expiring on the latest of: (i) 20 years after the effective date of the TIF Ordinance; or (ii) the twentieth anniversary of the Effective Date.

“TIF Act” means K.S.A. 1770 *et seq.*, as amended and supplemented.

“TIF District” means the “West Bank Redevelopment District,” a tax increment financing district created by the City pursuant to the TIF Ordinance in accordance with the TIF Act, which specifically includes the Phase One Property.

“TIF Ordinance” means Ordinance No. 51-[], passed by the Governing Body of the City creating the TIF District, as modified by Ordinance No. [].

“TIF Project Plan” means a redevelopment project plan adopted in accordance with the TIF Act.

Section 1.02. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- (a) The terms defined in this Article include the plural as well as the singular.
- (b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- (c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- (d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- (f) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

- (a) ***Due Authority.*** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.
- (b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.
- (c) ***No Litigation.*** There is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or

powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

(d) ***Governmental or Corporate Consents.*** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(e) ***No Default.*** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer. Each Developer makes the following representations and warranties, which are true and correct on the date hereof:

(a) ***Due Authority.*** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

(b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) ***No Litigation.*** No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Phase One Project, the Developer or any officer, director, member or shareholder of the Developer. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

(d) ***No Material Change.*** (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could materially adversely affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

(e) ***Governmental or Corporate Consents.*** Other than as set forth herein, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement.

(f) **No Default.** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

(g) **Compliance with Laws.** The Developer has not received notice of non-compliance with any valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements from any duly constituted governmental authority, commission or court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(h) **Other Disclosures.** The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 2.03. Conditions to the Effectiveness of this Agreement. As a precondition to the effectiveness of this Agreement, to the extent they have not already done so, the Developer will submit the following documents to the City:

(a) a copy of each Developer's Articles of Organization and a good standing certificate dated within ten days of the adoption of the Approving Resolution, each certified by the Secretary of State of the State of Kansas;

(b) a list of each Principal of each Developer and their associated percentage ownership, and if such member is not an individual, the individual owners and percentage ownership of such member;

(c) a duly executed copy of a Real Estate Purchase Agreement for Parcels A, B, and C depicted in Exhibit B.

(d) the Site Plan attached hereto as **Exhibit C**;

(e) the Phase One Project Budget attached hereto as **Exhibit D**; and

(f) a legal opinion from counsel to the Developer in form and substance acceptable to the City covering: (i) the due organization of each Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against the Developer.

Section 2.04. Maintenance of Existence. During the term of this Agreement, the Developer will maintain its legal existence, will continue to be in good standing under the laws of its state of organization, will continue to be qualified to do business in the State of Kansas, and, except as permitted by **Section 9.02**, will not dissolve, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

ARTICLE III

DEVELOPMENT OF THE PROJECT

Section 3.01. Cost of the Phase One Project. The Developer shall be solely responsible for and will pay the costs of the Phase One Project, subject to the terms of this Agreement governing (a) reimbursement from Phase One Tax Increment Funds; and (b) City collateral support for public horizontal improvements surrounding the Phase One Hotel (from the river to the back of the curb on McLean Boulevard).

Section 3.02. Design of the Phase One Project.

(a) The Phase One Property is located within and subject to the limitations imposed by the Ballpark Village Master Plan and the Delano Neighborhood Plan. The Developer will design and develop the Phase One Project in compliance with the Baseball Village Master Plan, the Delano Neighborhood Plan and all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws). Costs of any improvements to the Phase One Property that do not comply with this **Section 3.02** will not constitute Phase One TIF Eligible Costs eligible for payment or reimbursement. Developer acknowledges and agrees that it will be required to go through the Downtown Review Committee Process in accordance with the Downtown Development Incentives Policy.

(b) In order to maintain consistency in the City's vision for the entire riverfront and facilitate desired private development adjacent to the Ballpark, the Parties will seek to agree on the precise location of a public pedestrian bridge, boardwalk and related hardscape and softscape improvements on the Private Development Site. The terminus for the public pedestrian bridge on the west bank of the Arkansas River will be between Texas Avenue and Maple Street. The plans for the foregoing described improvements will be subject to City approval through its standard land use process.

(c) The City rezoned the area which includes the Phase One Property by use of Planned Unit Development (PUD) District #61 that replaced LC and GC zoning and Delano overlay district for the area. The PUD #61 as amended established tailored uses and design controls, parking requirements, landscaping requirements, height restrictions and setbacks that are specific to the proposed development while also providing flexibility to adapt to changes in future market demand. The PUD #61 as amended provides for compatible uses, design standards and themes with the Ballpark Village Master Plan (as defined in the Delano Art District Plan) and the intended Phase One Project complies with the requirements of PUD #61 as amended. The Developer acknowledges that it has conducted a complete review of the Delano Art District Plan, which requires that the Phase One Project shall be of an urban scale encouraging multi-story development with four-sided architecture.

Section 3.04. Project Milestones. Subject to Excusable Delays and the terms and provisions of this Agreement, the Developer agrees to meet the Project Milestones not later than the times set forth in **Exhibit E**. From the Commencement of Construction, the Developer will show diligent progress on the various aspects of the project sufficient to secure the scheduled completion. Upon reasonable advance notice, the Developer will meet with the City to review and discuss the Phase One Project in order to enable the City to monitor the status of the Phase One Project being performed and completed in accordance with this Agreement. If the Developer fails to meet the Project Milestones, the City may exercise its rights and remedies as set out in Article VIII of this Agreement.

Section 3.05. Construction of the Phase One Project. The Developer will cause the Phase One Project to be engineered and constructed in accordance with this Agreement and the Construction Plans. The Developer will obtain all Governmental Approvals for the Phase One Project and the Phase One Project will conform to all approved plans for such improvements as provided in this Agreement, applicable building codes, City Ordinances, the Downtown Development Incentives Policy, the Ballpark Village Master Plan, the Delano Neighborhood Plan, and all other applicable rules and regulations.

Section 3.06. Construction Plans. The Developer will submit Construction Plans for the Phase One Project for review and approval pursuant to the City Building Code and all other applicable review processes. The Construction Plans will be in sufficient completeness and detail to show that construction will be in conformance with this Agreement. The Developer agrees that all construction, improvement, furnishing, equipping, and installation work on the Phase One Project will be done in accordance with the Construction Plans and this Agreement. The Developer will furnish to the City the number of copies of the Construction Plans as required by the City. The Construction Plans will be filed in accordance with the City Building Code.

Section 3.07 Construction Permits and Approvals. Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. Such permits and approvals may be obtained by Developer in phases corresponding to particular stages of construction. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except provided that the City shall not be required to issue any such permits or approval for any portion of the Phase One Project not in conformance with this Agreement.

Section 3.08. No Waiver. Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by City Building Code and applicable State law. The Developer acknowledges that satisfaction of certain conditions contained in this Agreement require the reasonable exercise of the City's discretionary zoning authority by the City's Metropolitan Area Planning Commission and Governing Body in accordance with the City's Zoning Ordinance, the City Building Code and applicable State law.

Section 3.09. Certificate of Substantial Completion. Promptly after completion of the Phase One Project in accordance with the provisions of this Agreement, the Developer will submit a Certificate of Substantial Completion to the City. Substantial Completion means that the Developer or its successor or assigns have been granted a Temporary Certificate of Occupancy by the City for each structure built in the Phase One Project and have completed all work as required by the Construction Plans with respect to the Phase One Project. The Certificate of Substantial Completion will be in substantially the form attached as *Exhibit F*. The City will, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such 30-day period after delivery, the City furnishes the Developer with specific written objections, describing such objections and the measures required to correct such objections in reasonable detail. The City's execution of the Certificate of Substantial Completion will constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the Phase One Project.

Section 3.10. Covenant for Non-Discrimination. The Developer covenants by and for itself and any successors in interest that there will be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, disability, national origin

familial status, gender identity, genetic information, sexual orientation, veteran status or ancestry, or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 in the Municipal Code of the City of Wichita, in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase One Project, nor will the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Phase One Project.

The covenant established in this **Section 3.10** will, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Phase One Project or any part thereof. The covenants contained in this **Section 3.10** will remain for so long as this Agreement is in effect.

Section 3.11. Operation of Phase One Project. The Phase One Project shall comply with all applicable building and zoning, health, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all Governmental Approvals. Until such time as construction is commenced for each phase of development, the Developer shall maintain the Phase One Property in a good and safe condition, including regular maintenance and removal of vegetation.

Section 3.12. Hotel Provisions.

(a) **Opening.** Within 60 days after the issuance of a Certificate of Occupancy for the Phase One Hotel, the Phase One Hotel will be opened and will remain in operation for the remainder of the Term of this Agreement.

(b) **Hotel Flag.** The Phase One Hotel will at all times during the Term meet the Hotel Flag Requirement. Examples of franchisors which currently meet the Hotel Flag Requirement are set forth on **Exhibit G**.

Section 3.13. Land Use Restrictions. The Phase One Project will be limited to those residential and commercial uses that are expressly permitted under the Ballpark Village Master Plan, the Delano Neighborhood Plan and Planned Unit Development #61, subject to the land use restrictions set forth on **Exhibit H**. The Developer agrees that the types of land uses and retailers set forth in **Exhibit H** hereto are prohibited in the Phase One Project or on the Phase One Property unless approved in writing by the City prior to the execution of a letter of intent, lease or prior to the sale of land.

Section 3.14. Relocation Restrictions. For a period of three years following the City's acceptance of a Certificate of Substantial Completion, the Developer or approved assignee shall present to the City a written description of potential retailer or restaurant tenants to be located within the Phase One Project which are then-current tenants of properties located within a distance of two miles extending from the outside boundary lines of the Phase One Property (the "**Restricted Area**"). Such description shall be presented to the City within thirty (30) days prior to the date when the Developer or approved assignee expect to enter into any legal obligation for the lease of such retail or restaurant tenant space. The City shall have the absolute right to refuse any such prospective tenant presented by the Developer. If the City Representative does not provide a written objection to Developer within ten (10) business days of presentment, such non-response shall constitute a waiver of any objection to Developer's proposed sale or lease. The Developer further agrees to obtain a covenant from any assignee or purchaser of an ownership interest in the Phase One Project to abide by the terms of this **Section 3.14**.

Section 3.15. Payment of Taxes. The Developer represents and warrant to the City that they will pay or cause to be paid, at the times prescribed by State law, all ad valorem property taxes properly levied against the Phase One Project and Phase One Property owned by the Developer. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliate Entity from contesting the assessed value of the Phase One Project and/or the Phase One Property or a Principal Component of the same, or the taxes levied thereon, in good faith by appropriate proceedings; provided however that, on or prior to whatever date such taxes are due and payable, Developer (or its Affiliate Entity) shall pay any and all amounts that are contested under protest while any such proceedings are pending. Provided, further, that Developer or its Affiliate Entity shall not be entitled to contest the assessed value or taxes levied thereon of the Phase One Project and/or the Phase One Property or a Principal Component of the same until the value of the Principal Component of the Phase One Project or Phase One Property to be contested is assessed an appraised value by the County Appraiser that is ten percent (10%) or more higher than the immediately previous year's valuation. The first-year valuation will be set at the permitted construction value. This right shall first arise in the year in which the County Appraiser establishes the full valuation of the completed Phase One Project.

Section 3.16. Utilities to the Phase One Property. Construction of water and sewer utility improvements for the development haven been completed and financed by the City to the extent that these extensions are constructed under City access roads and streets, consistent with normal City public works contracting and financing practices, and subject to the requirements of the Kansas Cash Basis Law and Kansas Budget Law. The costs of connections of these utilities to privately developed properties will be the responsibility of the Developer.

ARTICLE IV

PARKING AND INFRASTRUCTURE MATTERS

Section 4.01. Phase One Parking Garage Easement. The City shall provide an easement to allow construction and operation of a portion of the Phase One Parking Garage on and over a portion of City-owned Riverfront Stadium property (the "Easement Area") in the form attached as *Exhibit I*. Holding this easement is a precondition to use of the Parking Garage. The easement shall cost \$1 annually, and shall exist until December 31, 2074, so long as the Phase One Parking Garage is properly maintained. Should Developer, its successors and assigns maintain the Easement through its entire term and if it or they desire(s) to continue the easement in existence, it or they shall pay the City the then-appraised value for a permanent easement, or shall contract with the City for annual use privileges for the Parking Garage, at the City's election.

Section 4.02. Use of Phase One Parking Garage/Parking Easement. The Developer will have secured, exclusive use of the Phase One Parking Garage from 5 a.m. – 6 p.m. Monday through Friday. The City will acquire a parking easement at no cost for 260 stalls which will provide free, public parking (including 85 public parking for hotel guests, retail patrons, and office tenants and visitors) during the hours of 6 p.m. – 2 a.m., Monday through Friday, and 5 a.m. Saturday through 2 a.m. Sunday and from 5 a.m. Sunday though 2 a.m. Monday. During events at the stadium, parking will be available to the public at the same cost as charged for adjacent surface parking. An equal number of parking stalls will be assigned for stadium management use as are lost as a result of the Parking Garage construction. Such easement shall be in the form attached as *Exhibit J*. The easement shall exist until December 31, 2074, provided the Phase One Parking Garage is properly maintained. The Developer agrees to assume all operational and maintenance responsibility for the Phase One Parking Garage. The Parties will add to the public parking stalls indicated above an additional number equal to those parking stalls displaced by the Parking Garage Easement, and will modify the City's parking easement to reflect these additional parking stalls.

Section 4.03. Redesign of McLean Boulevard. The City has redesigned and reconstructed McLean Boulevard into a pedestrian friendly two-way street including markings specific to bicycle and pedestrian use. The primary purpose of the lane so created is to encourage pedestrian and bicycle access. McLean Boulevard may be closed to other vehicular access during pre and post games or Ballpark Events.

Section 4.04. Pedestrian Bridge. The City will construct a pedestrian bridge across the Arkansas River. The terminus for the public pedestrian bridge on the west bank of the Arkansas River will be between Texas Avenue and Maple Street.

Section 4.05. Skybridges. The City acknowledges the Developer's intent to explore an enclosed skybridge across McLean Blvd. (running east and west), and the existing right field entrance to the Ballpark (from McLean Blvd., running north and south). The City is amenable to providing an annual franchise or minor street privilege consistent with the approval of other private skybridges across City streets.

ARTICLE V

CITY PROGRAMS

Section 5.01. TIF. The City approved the creation of the TIF District through the adoption of the TIF Ordinance. The TIF Ordinance approved certain improvements within the TIF District to be financed (i) from the proceeds of full faith and credit bonds of the City or (ii) with pay-as-you-go financing payable from tax increment funds generated by the TIF District. The City will facilitate TIF financing for the Phase One Project pursuant to the terms of **Article VI** of this Agreement.

Section 5.02. BASE/ARPA Funding. The Developer will use best efforts to secure a minimum of \$4,000,000 in BASE/ARPA Funds from the State of Kansas. In the event that the BASE/ARPA Funds are not approved and received prior to construction commencement of the Phase One Project, the City agrees to commit \$3,000,000 in City collateral funding, subject to all limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, which shall be specifically used for public horizontal improvements surrounding the Phase One Hotel (from the river to the back of the curb on McLean Blvd) and possibly for the skybridge connecting the hotel to the stadium.

Section 5.03. No STAR Revenues, CID Revenues, or Additional TIF Revenues. The Developer acknowledges that the Phase One Property is located within a community improvement district and STAR bond district, and that the TIF District encompasses property beyond the Phase One Property. Notwithstanding anything to the contrary contained within this Agreement, Developer acknowledges:

(a) All sales tax revenue pledged to the repayment of the STAR Bonds will be applied in accordance with State law to the repayment of the STAR Bonds. Developer acknowledges that it will not be entitled to any portion of sales tax revenues pledged to the repayment of the STAR Bonds or any STAR Bond proceeds.

(b) The Phase One Project will be subject to a community improvement district sales tax imposition but the Developer will not be entitled to any portion of the revenues generated by the community improvement district sales tax.

(c) The TIF District encompasses property beyond the Phase One Property owned by the Developer. Notwithstanding anything to the contrary contained within this Agreement, Developer acknowledges that revenues generated by the TIF District will be utilized to finance

improvements outside of the Phase One Project and that Developer will not be entitled to any portion of tax increment funds generated by or attributable to property within the TIF District but outside of the Phase One Property.

(d) None of the restrictions noted in this Section 5.03 preclude a future project plan on subsequent phases of the Private Development Site.

Section 5.04. Industrial Revenue Bonds.

(a) The City declares an intent to issue, pursuant to the IRB Act, industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$40,000,000 (or such other not-to-exceed amount mutually agreed upon by the City and the Developer) to finance the Phase One Office Building, the Phase One Parking Garage, and associated infrastructure and sitework, subject to satisfaction of the conditions set forth in this **Section 5.04**.

(b) Pursuant to the provisions of the Sales Tax Act, particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Phase One Office Building and Phase One Parking Garage and financed with proceeds of the IRB's are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. The City will apply to the State Department of Revenue for a sales tax exemption certificate upon the Developer's written acceptance of the Letter of Intent containing the City's conditions to the issuance of the Bonds in accordance with the City's Economic Development Incentive Policy. In the event that the IRB is not issued for any reason including failure of the Developer to comply with the requirements of paragraph (d) below, the Developer will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted under this Agreement.

(c) No exemption of ad valorem property taxation with respect to property financed by the IRB shall be requested by the Developer or granted by the City.

(d) The issuance of the IRB is subject to the satisfaction of the following:

- (i) the Developer's substantial compliance with the terms of this Agreement;
- (ii) the Developer's written acceptance of a Letter of Intent;
- (iii) the successful negotiation and sale of the IRB to a purchaser, which shall be either Developer or a financial institution determined by the Developer and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Developer and not the City;
- (iv) the receipt of the approving legal opinion of Gilmore & Bell, P.C., as Bond Counsel, in form acceptable to the City, the Developer and the Purchaser;
- (v) the obtaining of all necessary Governmental Approvals to the issuance of the IRBs; and
- (vi) the commitment to and payment by the Developer or Purchaser of all expenses relating to the issuance of the IRB, including, but not limited to: (1) expenses of the City and the City Attorney; (2) any placement fees and expenses; (3) all legal fees and

expenses of Bond Counsel; and (4) all recording, filing fees and other expenses required by the IRB Act.

ARTICLE VI

TIF FINANCING

Section 6.01. TIF Fund. The City shall establish a TIF Fund as provided by K.S.A. 12-1775 to deposit tax increment funds generated by the TIF District, which will be established and administered by the City in compliance with the laws of the State and will be held solely for the payment of eligible costs pursuant to the TIF Act and will not be otherwise expended or commingled with other funds.

Section 6.02. Pay-as-you-go Financing of TIF Eligible Costs. The Developer may seek reimbursement from Phase One Tax Increment Funds in an amount not to exceed the Phase One TIF Eligible Costs Cap pursuant to the terms of this **Section 6.02**. The Phase One Project will be constructed substantially in accordance with the Phase One Project Budget, but Developer shall not be required to expend any particular amount in any particular line item or for all line items included in the Phase One Project Budget. So long as the total amount of Phase One TIF Eligible Costs requested for reimbursement through Phase One Tax Increment Funds does not exceed (i) the actual amount expended for such use or (ii) the Phase One TIF Eligible Costs Cap:

(a) The Developer may seek reimbursement of any particular line item stated as Phase One TIF Eligible Costs in the Phase One Project Budget not exceeding 110% of the amount stated therein; and

(b) The Developer will be permitted to adjust the amounts estimated as Phase One TIF Eligible Costs within and between each line item with the written consent of the City Representative.

Subject to the following sentence, reimbursements will be made solely to EPC Real Estate Group. In the event the Developer assigns its interest in this Agreement (or a portion thereof) in accordance with the provisions of **Section 9.02** hereof, reimbursement for Phase One TIF Eligible Costs may, at the request of the Developer, be made to such assignee. Notwithstanding the foregoing, however, that the City will not split reimbursement payments among multiple entities but will consent to the appointment of an independent trustee bank to receive and disburse payments among multiple entities.

Notwithstanding anything to the contrary, in no event will the Developer be reimbursed for the same costs from both Phase One Tax Increment Funds and any other source of public funding. **Section 6.03.**

Certification of TIF Expenditures. The Developer will certify all costs and expenditures to be made in connection with the Phase One TIF Eligible Costs in accordance with the following:

(a) The Developer will submit to the City Certifications of TIF Expenditures in the form attached hereto as **Exhibit K** setting forth the amount for which disbursement from Phase One Tax Increment Funds is sought and an itemized listing of the related Phase One TIF Eligible Costs.

(b) Each Certification of TIF Expenditures will be accompanied by such bills, contracts, invoices, and other evidence as the City reasonably requires to document that such payment is owed or payment has been made by the Developer for such Phase One TIF Eligible Costs.

Notwithstanding the foregoing, the City will not consider for reimbursement from Phase One Tax Increment Funds any Certificate of TIF Expenditure filed prior to the date the Certificate of Substantial Completion has been delivered to and accepted by the City in accordance with **Section 3.09**.

Section 6.04. Reimbursement. The City will have thirty (30) calendar days after receipt of any Certification of TIF Expenditures to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of TIF Expenditures shows payment by the Developer of the Phase One TIF Eligible Costs; (2) the expense was incurred; (3) the aggregate amount of Phase One TIF Eligible Costs reimbursed from the Phase One Tax Increment Funds pursuant to this Agreement is less than the Phase One TIF Eligible Costs Cap and if added to the amount of the Certification of TIF Expenditures, would not exceed the Phase One TIF Eligible Costs Cap; (4) the costs were not paid from BASE/ARPA funds; (5) the Developer is not in default under this Agreement; and (6) the City has not discovered any fraud on the part of the Developer, then the City will approve the Certification of TIF Expenditures and reimburse the Developer for the Phase One TIF Eligible Costs pursuant to the terms of this Agreement within 30 days after the City's receipt of semi-annual Phase One Tax Increment Funds, subject to the availability of sufficient Phase One Tax Increment Funds to pay the TIF Expenditures in such Certification of TIF Expenditures in full or in part. In the event the City does not respond within such 30 day period, the Certification of TIF Expenditures will be deemed approved. If the City reasonably disapproves of the Certification of TIF Expenditures, the City will notify the Developer in writing of the reason for such disapproval within such thirty (30) day period and may request additional information from the Developer. In the event of a request for additional information, the thirty (30) day period for the City to respond will be extended for an additional thirty (30) day period commencing upon receipt by the City of the additional information requested from the Developer. Said thirty (30) day period of extension will apply to each request for additional information made by the City. In the event the City disapproves any Certification of TIF Expenditures, the Developer shall have the right to appeal such determination to the City's Governing Body.

ARTICLE VII

INDEMNITY

Section 7.01. Indemnification of City.

(a) Developer agrees to indemnify and hold the City and the City Indemnified Parties harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys' fees, resulting from, arising out of, or in any way connected with:

(i) the Developer's actions and undertaking in implementation of the Phase One Project or this Agreement; and

(ii) the negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants engaged or employed by the Developer in connection with the management, design, development, redevelopment and construction of the Phase One Project; and

(iii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any joint venture partner, lender, architect, contractor, consultant or other vendor.

It is understood that the duty of the Developer to indemnify or hold harmless includes the duty to defend. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

This **Section 7.01** will not apply to willful misconduct or negligence of the City or its officers, agents, or employees. This **Section 7.01** includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, *et seq.*), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 *et seq.*) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify the City and the City Indemnified Parties from liability.

(b) In the event any Action is begun or made as a result of which the Developer or City may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties will give prompt notice to the Developer of the occurrence of such event.

(c) The rights to indemnification set forth in this Agreement will survive the expiration or earlier termination of this Agreement.

Section 7.02. Insurance.

(a) Developer will carry, or cause the General Contractor or Developer's permitted successor and assigns to carry, the following insurance coverage insuring Developer, General Contractor, Developer's permitted successors and assigns, and City as specified below through final completion (as defined in the construction contracts):

(i) Special form builders risk insurance (including theft, vandalism, and mechanical breakdown coverage), in an amount reasonably acceptable to the Developer, insuring Developer's interests in each respective phase of the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer for the Developer Project, that shall become part of the project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction). A waiver of subrogation for all parties, including subs and sub subs shall be provided and all will be additional insureds;

(ii) Commercial general liability insurance insuring Developer and City against liability for bodily injury and property damage caused by the activities of Developer, City, and their respective agents, contractors, or employees in the amount of not less than \$500,000 or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies will not name the City, or insure the City, for an amount of coverage in excess of the City's maximum liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);

(iii) Workers' compensation insurance (if applicable);

(iv) Automobile insurance (if applicable) with per occurrence limits of not less than \$500,000; and

(v) All other insurance required by law.

(b) The following general requirements apply to all insurance coverage carried by Developer and General Contractor pursuant to **Section 7.02(a)**:

(i) To the extent available and allowed by law, each policy will contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;

(ii) Subject to the limitations on builder's risk coverage in **Section 7.02(a)(i)** and on general liability insurance in **Section 7.02(a)(ii)**, the City will be included as additional insured as its interests appear in all policies obtained by Developer and General Contractor;

(iii) Such policies will be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;

(iv) Developer will provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;

(v) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium will be provided by Developer to the City Representative; and

(vi) The Developer and General Contractor shall provide to the City Representative thirty (30) days' prior written notice of cancellation.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.01. Defaults – General. Subject to the extensions of time set forth in **Section 8.07** below, failure or delay by any Party to perform any material term or provision of this Agreement, after receiving written notice thereof and failing to cure, as set forth in **Section 8.02** below, constitutes an “**Event of Default**” under this Agreement. The Claimant will give written notice of default to the defaulting Party, specifying the nature of the default.

Section 8.02. Default Proceedings. The Claimant will not institute proceedings against a defaulting Party, nor be entitled to damages if the defaulting Party within fifteen (15) days from receipt of the written notice of default set forth in **Section 8.01**, commences with due diligence to cure, correct or remedy such failure or delay and completes such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

Section 8.03. Remedies on Default.

- (a) Whenever any Event of Default by the City under *Section 5.04* occurs and is continuing, the only remedy that may be sought from the City is strictly limited to specific performance of the City's obligations set forth under the defaulted section, or if applicable, the remedies set forth in the ancillary documents referenced by the defaulted section.
- (b) Whenever any Event of Default by the City not subject to *Section 8.03(a)* occurs and is continuing, the only remedy that may be sought from the City is strictly limited to use, as applicable, of available Phase One Tax Increment Funds to pay Phase One TIF Eligible Costs (i.e., the City can have no liability under this Agreement that in any way extends to its general or tax funds, or any other source of funds apart from the Phase One Tax Increment Funds derived from the Phase One Project), except that, in case of any diversion by the City of Phase One Tax Increment Funds in breach of this Agreement, the City will be obligated to restore such diverted revenues, dollar for dollar, from any lawfully available source of appropriations.
- (c) Whenever any Event of Default by the Developer occurs and is continuing, subject to applicable cure periods, the City may (1) pursue statutory remedies and specific performance of the Agreement and/or (2) refuse to approve any further Certificates of TIF Expenditures or make any disbursements until such Event of Default is cured by the Developer and withhold any Phase One Tax Increment Funds and/or (3) terminate this Agreement.
- (d) Notwithstanding the foregoing, in the event Developer has failed to Commence Construction by the date specified by *Exhibit E*, then, in addition to the general remedies provided to City above, the City may send written notice of failure to the Developer ("the **Initial Performance Notice**"). If after receipt of such Initial Performance Notice the Developer fails to thereafter cure the non-performance within thirty (30) days following receipt of such notice (subject to Excusable Delays), the City may send a second written notice to the Developer (the "**Final Performance Notice**"), with the following statement in bold at the beginning of such notice: "**WARNING, SECOND PERFORMANCE NOTICE. Failure to respond to this notice within thirty (30) days may result in forfeiture of development rights.**" If Developer fails to thereafter cure the non-performance of its obligation to Commence Construction within thirty (30) days after receipt of the Final Performance Notice (subject to Excusable Delays), then the City may, in addition to its remedies described in Section 8.03(c) above, elect to repurchase the Phase One Property free and clear of all liens, mortgages or other monetary encumbrances is "AS IS" condition for \$1.00 per acre ("**Phase One Repurchase Option**"). If the City elects to exercise its Phase One Repurchase Option, the right of the Developer to develop the Phase One Property shall be deemed forfeited, voided and no longer enforceable and in effect. If the City exercise its Phase One Repurchase Option in accordance with the terms in this Section 8.03(d), the City and Developer shall agree to enter into a Repurchase Agreement in the form attached hereto as *Exhibit M*.

- (e) Notwithstanding any other provision of this Agreement to the contrary, in no event will the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this **Section 8.03(d)**, consequential damages include, but are not limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by any non-defaulting Party.
- (f) If a Party has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Party seeking to enforce the right or remedy, then and in every case the Parties will, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Parties will continue as though no such proceeding had been instituted.

Section 8.04. Legal Actions.

(a) ***Institution of Legal Actions.*** Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Sedgwick County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

(b) ***Applicable Law.*** The laws of the State of Kansas govern the interpretation and enforcement of this Agreement.

(c) ***Acceptance of Service of Process.***

(i) In the event that any legal action is commenced by the Developer against the City, service of process on the City will be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer will be made by personal service upon an officer or agent of the Developer and will be valid whether made within or without the State or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

Section 8.05. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 8.06. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. No waiver made by a Party will apply to obligations beyond those expressly waived.

Section 8.07. Enforced Delay; Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by a Party hereunder will not be deemed to be in default, and all performance and other dates specified in this Agreement will be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to default of the other Party or Excusable Delays.

(b) Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, and by the execution of said amendment by the Parties or their successors in interest. Each amendment must be approved by resolution adopted by the Governing Body. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties will take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

Section 9.02. Assignment.

(a) The Developer may at any time with prior written notice to the City (including a copy of the proposed Assignment Agreement, as defined below) but without the need for approval from the City: (i) assign, transfer and convey all or substantially all of the Developer's rights and duties under this Agreement with respect to a Principal Component to an Affiliate Entity; (ii) sell, transfer and convey all or any portion of the Phase One Project, and the underlying real property, owned by the Developer to an Affiliate Entity; and (iii) make a collateral assignment of its rights under this Agreement to a single financial institution as security for a financing of the Phase One Project.

(b) Prior to the delivery and acceptance by the City of a Certificate of Substantial Completion, the Developer may, with prior written notice to the City (including a copy of the proposed Assignment Agreement, as defined below) and written approval from the City Representative: (i) assign, transfer and convey all or substantially all of the Developer's rights and duties under this Agreement with respect to a Principal Component to a third party; and (ii) sell, transfer and convey all or any portion of the Phase One Project, and the underlying real property, owned by the Developer.

(c) After the delivery and acceptance by the City of a Certificate of Substantial Completion, the Developer may, with prior written notice to the City (including a copy of the proposed Assignment Agreement, as defined below) but without the need for approval of the City: (i) assign, transfer and convey all or substantially all of the Developer's rights and duties under this Agreement with respect to a Principal Component to a third party; and (ii) sell, transfer and convey all or any portion of the Phase One Project, and the underlying real property, owned by the Developer.

(d) Any assignment of the Developer's rights under this Agreement will be made pursuant to an assignment and assumption agreement between the Developer and the proposed assignee ("**Assignment Agreement**") under which the proposed assignee will assume the obligations of the Developer to the extent of the interest being assigned. The Assignment Agreement will detail:

(i) the Principal Component or portion of the Project being assigned and the rights and obligations assigned to and assumed by the proposed assignee;

(ii) any applicable apportionment of the right to reimbursement from Phase One Tax Increment Funds;

(e) Each Assignment Agreement will be delivered to the City at least 30 days prior to the proposed effective date. Regardless of whether City approval of an assignment is required, the City Representative may seek clarification of the terms of an Assignment Agreement in order to ensure all Developer obligations to the City will be fulfilled and for orderly administration of the Phase One Development Agreement. If (i) in the City's sole discretion the terms of an Assignment Agreement are ambiguous or unclear, or (ii) a dispute regarding the terms of an Assignment Agreement arises between the parties to that Assignment Agreement, then the City will not be required to take any action or release any funds purported to be affected by the Assignment Agreement until the City has received written clarification and acknowledgement signed by all parties to that Assignment Agreement.

(f) Any decision to consent or refuse consent to an assignment pursuant to this **Section 9.02** will be at the discretion of the City Representative, which may be appealed to the governing body, but consent will not be unreasonably withheld. Assignments pursuant to this **Section 9.02**, whether or not accomplished with the City's consent, shall not operate as a release of the obligations of the Developer until such time as the person or entity accepting the assignment has been vetted through a City-selected independent analyst and has been accepted by public vote of the City Council. Nothing herein will be construed to delegate rights or responsibilities of the City under this Agreement, including without limitation the determination of eligible project costs for reimbursement.

(g) Notwithstanding the foregoing or anything in this Agreement to the contrary, there shall be no restriction on, and City approval shall not be required for the leasing of the Project (or any portion thereof) to tenants.

Section 9.03. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, will have the right and authority to review, inspect, and audit, from time to time, all of the Developer's books and records relating to the Phase One TIF Eligible Costs as pertinent to the purposes of this Agreement.

Section 9.04. Right of Access. For the purposes of assuring compliance with this Agreement, the City Representative will have the right of access to the Phase One Project, without charges or fees, during normal business hours for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing or reconstructing of the Phase One Project.

Section 9.05. No Other Agreement. The Parties agree that the Phase One Project will be implemented as agreed in this Agreement and as set forth in the Ballpark Village Master Plan, the Delano Neighborhood Plan, the CID Policy and Downtown Development Incentives Policy. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing or

reconstructing the Phase One Project and the payment of Phase One TIF Eligible Costs. Nothing in this Agreement will be deemed an amendment of the Ballpark Village Master Plan, the Delano Neighborhood Plan, or Downtown Development Incentives Policy unless specifically exempted herein or by subsequent action by the Governing Body. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof, including the 2019 Development Agreement but only as it relates to the Phase One Project, and is a full integration of the agreement of the Parties. For purposes of clarity, EPC Real Estate Group LLC is not a party to the 2019 Development Agreement and has no rights, duties or obligations in connection with the same.

Section 9.06. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement will be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event will the validity or enforceability of the remaining valid portions hereof be affected.

Section 9.07. Notice. All notices and requests required or desired to be given pursuant to this Agreement will be in writing and will be sent as follows:

To the Developer:

To the City:

City of Wichita
Attn: City Manager
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202
Email: rlayton@wichita.gov

With a copy to:

City of Wichita
Department of Economic Development
Attention: Mark Elder
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202
Email: melder@wichita.gov

and

City of Wichita
Department of Law
Attention: City Attorney
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202
Email: jmagana@wichita.gov

or at such other addresses as the Parties may indicate in writing to the other either by email, personal delivery, national overnight courier service, or by certified or registered mail, postage prepaid, return receipt requested, with proof of delivery thereof. Emailed notices will be deemed effective: (a) when sent, if followed by transmittal by national overnight courier or hand delivery on the next business day; or (b) upon recipient's acknowledgment of receipt. Mailed notices sent via certified or registered mail, postage prepaid, return receipt requested, with proof of delivery thereof, will be deemed effective on the third day after mailing; mailed notices sent via national overnight courier service will be deemed effective on the next business day after they are sent; all other notices will be effective when delivered.

Section 9.08. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same agreement. Hand signatures transmitted via portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

Section 9.09. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval will not be unreasonably withheld.

Section 9.10. Survival. Notwithstanding the termination of this Agreement, the Developer's obligations set out in **Article VII** will survive the expiration or earlier termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term hereof.

Section 9.11. Incorporation of Exhibits. The exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 9.12. Mutual Assistance. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 9.13. No Partnership. Nothing contained herein will be construed as creating a partnership between the Parties.

Section 9.14. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 9.15. Conflicts of Interest.

(a) No member of the Governing Body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings will participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest will immediately, upon knowledge of such possible conflict, disclose, in

writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, will not participate in any actions or discussions relating to the activities herein proscribed.

(b) The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Phase One Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Phase One Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Phase One Project, or in any activity, or benefit therefrom, which is part of the Phase One Project at any time during or after such person's tenure.

Section 9.16. Required Disclosures. The Developer will immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 9.17. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or State income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 9.18. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the Parties are required, or the Parties are required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the Governing Body before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this *Section 9.18*.

Section 9.18. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9.20. Cash Basis and Budget Laws. The Parties acknowledge and agree that the ability of the City to enter into and perform certain financial obligations pursuant to this Agreement are subject to the K.S.A. 10-1101 *et seq.* and K.S.A. 79-2935 *et seq.*

Section 9.21. Effective Date. This Agreement is effective upon the Effective Date.

Section 9.22. Termination Date. Notwithstanding early termination provisions as hereinbefore set forth, this Agreement shall terminate upon the later of: (a) 20 years after the effective date of the TIF Ordinance; or (b) the twentieth anniversary of the Effective Date.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

By: _____
Brandon Whipple Mayor

ATTEST:

Karen Sublett, City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

On this ____ day of _____, 20__, before me personally appeared Brandon Whipple, personally known, who being by me duly sworn did say that he is the Mayor of the City of Wichita, Kansas, and that said instrument was signed and delivered on behalf of said municipal corporation and acknowledged to me that he executed the same as the free act and deed of said municipal corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law
and City Attorney

WICHITA RIVERFRONT LP

By: _____
Matthew White, Managing Member of
WR, LLC - General Partner of WRLP

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me personally appeared Matthew White, to me personally known, who being by me duly sworn did say that he is the Managing Member of WR, LLC, which limited liability company is the general partner of Wichita Riverfront LP , and that said instrument was signed and delivered on behalf of said limited partnership and acknowledged to me that he executed the same as authorized by WR, LLC as the free act and deed of Wichita Riverfront LP..

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

EPC REAL ESTATE GROUP, LLC

By: _____

Name: Austin Bradley

Title: Executive Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20 __, before me personally appeared Austin Bradley, to me personally known, who being by me duly sworn did say that he is the Executive Vice President of EPC Real Estate Group, LLC, and that said instrument was signed and delivered on behalf of said limited liability company and he acknowledged to me that he executed the same as the authorized, free act and deed of EPC Real Estate Group, LLC.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF PRIVATE DEVELOPMENT SITE

EXHIBIT B

LEGAL DESCRIPTION AND MAP OF PHASE ONE PROPERTY

Exhibit B
Parcels A, B, C

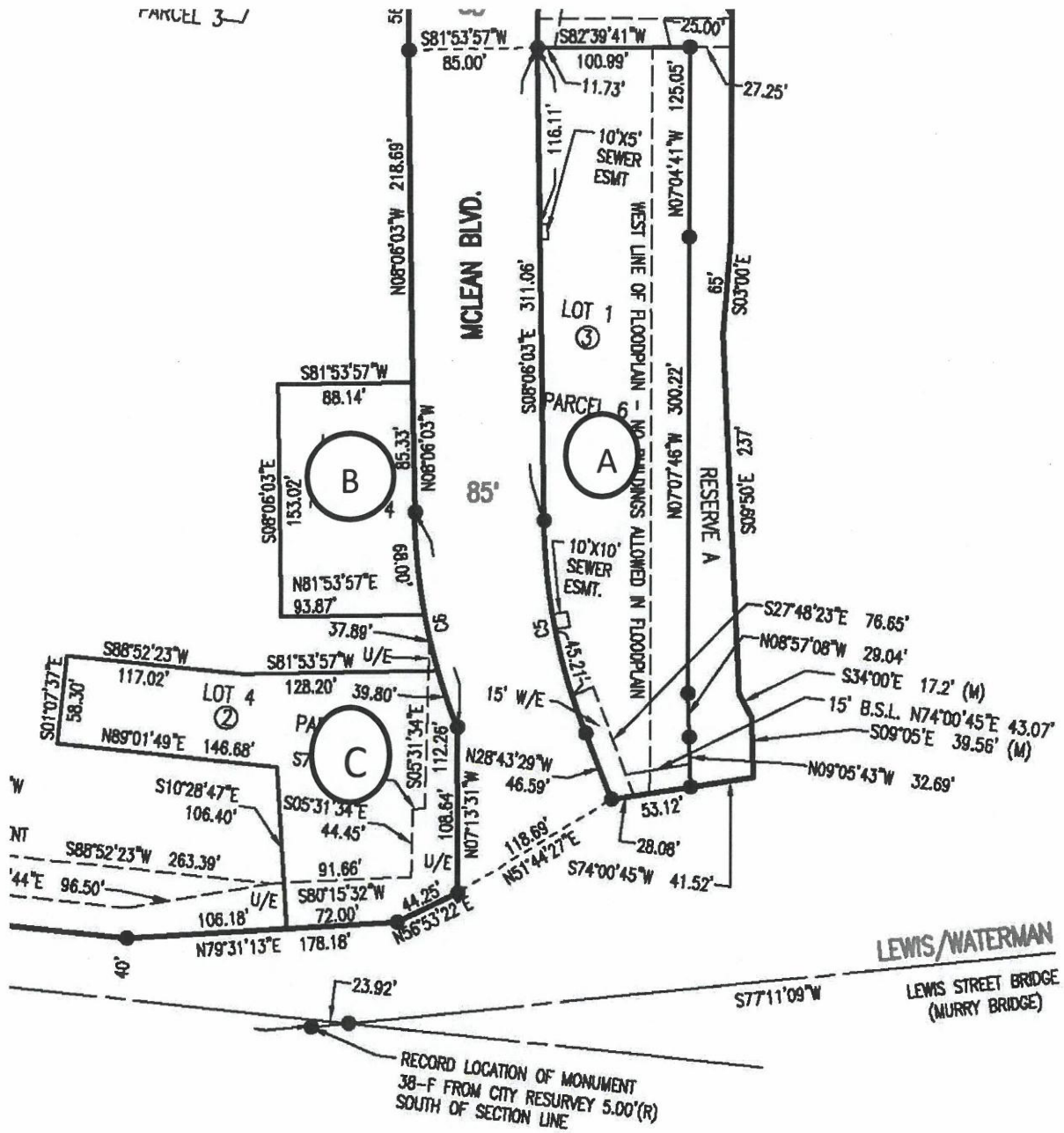


Exhibit B
Parcels A, B, C

Parcel A: Lot 1, Block 3, Ballpark Village Addition to Wichita, Sedgwick County, Kansas

Parcel B: Lot 3, Block 2, Ballpark Village Addition to Wichita, Sedgwick County, Kansas

Parcel C: Lot 4, Block 2, Ballpark Village Addition to Wichita, Sedgwick County, Kansas

EXHIBIT C

SITE PLAN

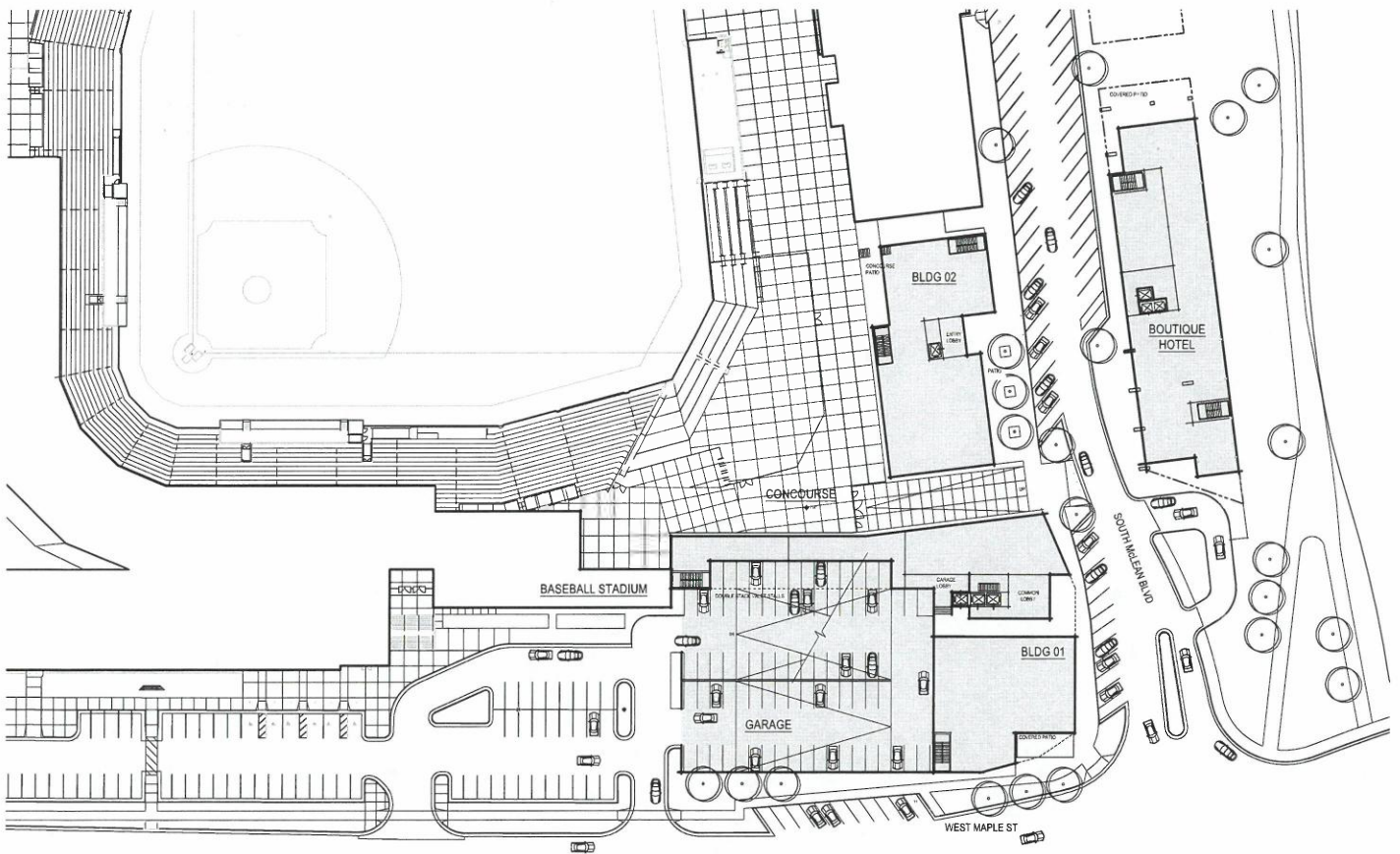


EXHIBIT D
PHASE ONE PROJECT BUDGET

PRELIMINARY - TIF Development Budget

Category	Total Cost	TIF	ARPA	Private
REAL PROPERTY ACQUISITION				
Acquisition				
Land Acquisition	\$ -	\$ -	\$ -	\$ -
Title Commitment / Closing Cost	\$ 57,500	\$ -	\$ -	\$ 57,500
SUBTOTAL ACQUISITION COSTS	\$ 57,500	\$ -	\$ -	\$ 57,500
HARD COSTS				
Building Construction				
Building	\$ 22,681,365	\$ -	\$ -	\$ 22,681,365
Sky Bridge	\$ 1,589,766	\$ -	\$ 1,589,766	\$ -
BUILDING CONSTRUCTION	\$ 24,271,131	\$ -	\$ 1,589,766	\$ 22,681,365
Site Construction				
Utility Relocations	\$ 100,000	\$ -	\$ -	\$ 100,000
Site Work / Public Riverfront Improvements	\$ 3,910,234	\$ -	\$ 3,910,234	\$ -
ON-SITE CONSTRUCTION	\$ 4,010,234	\$ -	\$ 3,910,234	\$ 100,000
Owner Hard Cost Contingency	\$ 516,116	\$ -	\$ -	\$ 516,116
SUBTOTAL HARD COSTS	\$ 28,797,481	\$ -	\$ 5,500,000	\$ 23,297,481
SOFT COSTS				
PLANNING & DESIGN	\$ 1,234,051	\$ -	\$ -	\$ 1,234,051
GENERAL DEVELOPMENT	\$ 1,456,350	\$ -	\$ -	\$ 1,456,350
FF&E	\$ 4,545,000	\$ -	\$ -	\$ 4,545,000
LEGAL	\$ 200,000	\$ -	\$ -	\$ 200,000
MARKETING	\$ 150,000	\$ -	\$ -	\$ 150,000
REAL ESTATE TAXES	\$ 250,000	\$ -	\$ -	\$ 250,000
TI / LEASING COMMISSIONS	\$ 38,750	\$ -	\$ -	\$ 38,750
FINANCING	\$ 918,749	\$ -	\$ -	\$ 918,749
Soft Cost Contingency	\$ 196,476	\$ -	\$ -	\$ 196,476
SUBTOTAL SOFT COSTS	\$ 8,989,377	\$ -	\$ -	\$ 8,989,377
TOTAL DEVELOPMENT INVESTMENT	\$ 37,844,358	\$ -	\$ 5,500,000	\$ 32,344,358
PERCENTAGE OF TOTAL COST	100%	0%	15%	85%

PRELIMINARY - TIF Development Budget

Category	Total Cost	TIF	Private
REAL PROPERTY ACQUISITION			
Acquisition			
Land Acquisition	\$ -	\$ -	\$ -
Title Commitment / Closing Cost	\$ 32,500	\$ -	\$ 32,500
SUBTOTAL ACQUISITION COSTS	\$ 32,500	\$ -	\$ 32,500
HARD COSTS			
Building Construction			
Building	\$ 18,439,023	\$ -	\$ 18,439,023
Parking Garage	\$ 7,121,973	\$ 7,121,973	\$ -
BUILDING CONSTRUCTION	\$ 25,560,996	\$ 7,121,973	\$ 18,439,023
Site Construction			
Utility Relocations	\$ 150,000	\$ 150,000	\$ -
Site Work	\$ 1,100,915	\$ 1,100,915	\$ -
ON-SITE CONSTRUCTION	\$ 1,250,915	\$ 1,250,915	\$ -
Owner Hard Cost Contingency	\$ 639,025	\$ 310,552	\$ 328,473
SUBTOTAL HARD COSTS	\$ 27,450,936	\$ 8,683,440	\$ 18,767,496
SOFT COSTS			
PLANNING & DESIGN	\$ 1,141,901	\$ -	\$ 1,141,901
GENERAL DEVELOPMENT	\$ 1,820,933	\$ -	\$ 1,820,933
LEGAL	\$ 200,000	\$ -	\$ 200,000
MARKETING	\$ 22,500	\$ -	\$ 22,500
REAL ESTATE TAXES	\$ 250,000	\$ -	\$ 250,000
TI / LEASING COMMISSIONS	\$ 5,872,735	\$ -	\$ 5,872,735
FINANCING	\$ 1,061,766	\$ -	\$ 1,061,766
Soft Cost Contingency	\$ 179,454	\$ -	\$ 179,454
SUBTOTAL SOFT COSTS	\$ 10,549,290	\$ -	\$ 10,549,290
TOTAL DEVELOPMENT INVESTMENT	\$ 38,032,726	\$ 8,683,440	\$ 29,349,286
PERCENTAGE OF TOTAL COST	100%	23%	77%

EXHIBIT E

PHASE ONE PROJECT MILESTONES

<u>Date</u>	<u>Obligation</u>
July 7, 2022	Commencement of Construction
July 7, 2024	Obtain Temporary Certificate of Occupancy for all buildings comprising the Phase One Project (Complete Construction)

EXHIBIT F

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Wichita Riverfront LP and EPC Real Estate Group LLC (individually and collectively, the “**Developer**”), pursuant to that certain Phase One Development Agreement dated as of [____], between the City of Wichita, Kansas (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, 20____, the construction and equipping of the Phase One Project (as such terms are defined in the Agreement) has been substantially completed in accordance with the Agreement, including but not limited to the completion of the Phase One Hotel, the Phase One Office Building, and the Phase One Parking Garage.

2. The Phase One Project has been completed in a good and workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement) and contains all components of the Phase One Project required by or described in the Agreement. A Temporary Certificate of Occupancy has been obtained for the Phase One Project.

3. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein, certifying that the Phase One Project has been substantially completed in accordance with the Agreement.

4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Phase One Project.

5. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period) shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Phase One Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, _____.

WICHITA RIVERFRONT LP

By: _____

Name: _____

Title: _____

EPC REAL ESTATE GROUP, LLC

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF WICHITA, KANSAS

By: _____

Name: _____

Title: _____

EXHIBIT G

HOTEL FLAG REQUIREMENT EXAMPLES AS OF EFFECTIVE DATE

Aloft
Courtyard
DoubleTree
Four Points
Great Wolf Lodge
Hilton Garden Inn
Hyatt House
Hyatt Place
Radisson
SpringHill Suites

EXHIBIT H
LAND USE RESTRICTIONS

1. Adult Book and Video Stores or other sexually oriented businesses
2. Community Correctional Facilities
3. Half-way Houses
4. Drug or Alcohol Rehabilitation Facilities
5. New and/or Used Car Lots
6. Multi-game, Casino-style Gambling Facilities
7. Commercial Billboards
8. Payday Lenders or similar short-term lending or check cashing institutions
9. Drive thru windows for commercial or retail businesses
10. Gas stations or auto repair facilities
11. Convenience stores on stand-alone building pads
12. Fast food restaurants on stand-alone building pads

EXHIBIT I

FORM OF PHASE ONE PARKING GARAGE CONSTRUCTION EASEMENT

PERMANENT EASEMENT

THIS EASEMENT made this ____ day of _____, 2022, by and between the City of Wichita, a municipal corporation, “(City””, and EPC Real Estate Group, LLC, a Kansas limited liability company (“Developer”), party of the second part.

WITNESSETH: That the City, in consideration of the sum of One Dollar and other Good and Valuable Considerations (\$1.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Developer a perpetual right-of-way and easement for the construction, maintenance and operation of a public parking structure over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

, Sedgwick County, Kansas.

And said Developer, heirs and assigns is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such parking structure.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

City of Wichita, Kansas:

Brandon J. Whipple, Mayor

STATE OF KANSAS) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on _____ day of _____, 2022 by Brandon J. Whipple, Mayor of the City of Wichita, Kansas, a municipal corporation.

Notary Public

My Commission Expires: _____

Approved as to Form:

Jennifer Magana, City Attorney and Director of Law

EXHIBIT J

FORM OF PHASE ONE PARKING GARAGE PUBLIC PARKING EASEMENT

PARKING EASEMENT

THIS PARKING EASEMENT (this “**Agreement**”) is made and entered into effective for all purposes as of [April 29, 2022] (the “**Effective Date**”), by and between Wichita Riverfront LP, a Delaware limited partnership, EPC Real Estate Group LLC, a Kansas limited liability corporation (collectively, “**Developer**”) and the City of Wichita, Kansas, a municipal corporation (“**City**”).

WITNESSETH:

WHEREAS, Developer intends to acquire certain property generally located northwest of the intersection of Maple Street and McLean Boulevard within the City and more particularly described in *Exhibit A* attached hereto (the “**Property**”); and

WHEREAS, Developer intends to develop the Property into a mixed-use development, including the construction of a multi-level parking structure (a “**Parking Garage**”); and

WHEREAS, the City and Developer have entered into a Phase One Development Agreement (the “**Development Agreement**”) regarding the development of the Property, pursuant to which the Developer has agreed to grant to the public a non-exclusive easement for the public to use the Parking Spaces and the right to permit the public to use the Parking Spaces in return for the incentives granted by the City in the Development Agreement, all in accordance with and subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, it is hereby agreed as follows:

1. **Definitions.** Capitalized words used in this Agreement have the meanings set forth in the Recitals to this Agreement, the Development Agreement, or they have the following meanings:

“**Commencement Date**” means the date the Developer completes construction of the Parking Garage, which shall be on or before July 7, 2024.

“**Designated Hours**” means the days and hours the Parking Spaces are not limited exclusively to Project Users and all or a portion of the Parking Garage is available for use by Public Users, as set forth in *Section 4* hereof including the hours of 6 p.m. – 2 a.m., Monday through Friday, and 5 a.m. Saturday through 2 a.m. Sunday and from 5 a.m. Sunday through 2 a.m. Monday.

“**Development Agreement**” means the Phase One Development Agreement dated as of April 29, 2022 by and among the City and Developer regarding the development of the Property.

“**Easement**” means the non-exclusive easement granted in *Section 2* of this Agreement.

“Event Days” means days where a ticketed event is hosted at Riverfront Stadium.

“Event Hours” means, on days where a ticketed event is hosted at Riverfront Stadium, a time period beginning two hours prior to the start time of the event and continuing until the event is completed.

“Parking Spaces” means a minimum of 260 parking spaces located within the Parking Garage. Of the 260 Parking Spaces, (a) 85 spaces may be designated for hotel guests, retail patrons, and office tenants and visitors and (b) on Event Days an equal number of parking stalls (anticipated to be 38 stalls) will be assigned for use by Riverfront Stadium management as are lost as a result of the Parking Garage construction.

“Project Users” means the Developer and any other owners, tenants, or other occupants of the Property, together with their respective employees, agents, customers, and invitees, whose rights to use the Parking Spaces, which are unrestricted except as expressly set forth in this Agreement, derive from ownership and other rights existing outside this Agreement.

“Public Users” include the general public but do not include any Project Users.

“Reserved Spaces” has the meaning given in *Section 4* of this Agreement.

“Restricted Hours” means the days and hours that are not Designated Hours during which use of the Parking Spaces may be limited to Project Users exclusively.

“Riverfront Stadium” means the Riverfront Stadium owned by the City located at 275 S. McLean Boulevard, which is adjacent to the Parking Garage.

2. Grant of Easement. Effective upon the Commencement Date the Developer does hereby grant a non-exclusive easement to the Public Users for vehicular and pedestrian access to enter, go upon and use the Parking Spaces solely for the purpose of parking motorcycles, automobiles, sport utility vehicles, vans, pickup trucks, or any other passenger vehicles (but excluding any buses, mini-buses, RVs or similar vehicles), all subject to the terms, covenants and conditions set forth in this Agreement. The Easement shall include the right to use drives, ramps, aisle ways, driveways, entrances, entrance ways, exits, and exit ways utilized in connection with the Parking Spaces for the purpose of providing vehicular and pedestrian access. If the Developer does not identify certain parking spaces to be Reserved Spaces, the Public Users may use any of the Parking Spaces throughout the Parking Garage, subject to any applicable and reasonable handicapped or vehicle size restrictions.

3. Fees. The City and the Public Users shall not be required to pay any rent for use of the Parking Spaces during the Designated Hours; provided, however, that during Event Hours Public Users may be required to pay a fee to use the Parking Spaces at a cost not greater than the cost charged for adjacent surface parking.

4. Hours of Parking Spaces; Rules and Regulations. The Public Users are prohibited from entering into, remaining in, parking in, or otherwise using the Parking Spaces

during Restricted Hours, during which time access to the Parking Spaces may be restricted by a gate or other security and restriction programs selected by the Developer, or any other party controlling or operating the Parking Spaces during Restricted Hours. The Developer may designate certain spaces in the Parking Garage as reserved (collectively, such spaces the “**Reserved Spaces**”), provided that the Parking Spaces shall remain available for use by Public Users without restriction during Designated Hours (subject to the restrictions during Restricted Hours and any applicable and reasonable handicapped or vehicle size restrictions and restrictions of certain spaces on Event Days for use by Riverfront Stadium management). The Parking Spaces shall not be used by Public Users to conduct any business or for any purpose in violation of any regulation, ordinance, state or federal law, or in violation of the Rules and Regulations attached hereto as *Exhibit “B”* incorporated herein by reference, or any reasonable amendment or modification thereto adopted by the Developer. The Developer shall have the right to suspend or restrict individual Public Users from using the Parking Spaces for reason of flagrant or repeated violations of the terms of this Agreement or the Rules and Regulations.

5. Parking Garage Equipment. The Developer may design and install parking access and control equipment to accommodate the operation of the Parking Garage. Any and all equipment installations and modifications made within or to the Parking Garage to accommodate the use of the Parking Spaces by the Public Users shall be installed at the expense of the Developer.

6. Security. Developer may develop appropriate security measures for the benefit of the users, owners, lessees and operators of the Parking Spaces, which measures may include cameras, guards, gates, and additional lighting. The Developer shall bear the cost of any equipment selected by it to maintain security in the Parking Garage.

7. Maintenance; Operation. Developer shall be responsible for all cleaning, repair and maintenance costs for the Parking Garage and shall maintain all parts thereof in good condition and repair (ordinary wear and tear excepted) and in accordance with all applicable building codes, ordinances, regulations, and laws, including but not limited to (i) maintaining the structural integrity of the Parking Garage building, (ii) maintaining the surface of the parking ramp and all striping of the stalls in good condition, including periodic sealing, (iii) furnishing all parts, mechanisms and devices required to keep the machinery, equipment, security equipment, elevators and personal property constituting a part of the Parking Garage in good mechanical and working order, (iv) maintaining all signage within the Parking Garage, (v) snow and ice removal, and (vi) regular cleaning as customary for a multi-level Parking Garage.

8. Reservation of Rights. Developer reserves and retains the right for itself and its lessees, and agents, to free access to maintain and use the Parking Garage at any and all times for any purpose whatsoever provided that such use does not unreasonably interfere with Public Users’ permitted use thereof. Such rights include installing directional and way-finding markings to identify Reserved Spaces, and the right of security personnel to address any security concerns in the Parking Garage.

9. Damage or Destruction by Fire or Other Casualty. In the event that the Parking Spaces shall be damaged by fire or other casualty, the Developer shall repair the Parking Spaces with all reasonable diligence, placing the same in substantially the same condition as it

was at the time of such damage; and the Developer shall be responsible for repairing and/or replacing any and all equipment, alterations, and improvements it has made (or caused to be made) to the Parking Garage. Until substantial completion of the Parking Spaces and reopening thereof, the parties' respective rights and obligations granted herein, including without limitation, the rights under the Easement, shall temporarily cease.

10. Recording. Immediately following the Commencement Date, the parties shall record this Agreement with the Sedgwick County Register of Deeds.

11. Term. The Term of this Agreement shall commence on the Effective Date and expire December 31, 2074, unless terminated earlier pursuant to the terms of this Agreement.

12. Miscellaneous. This Agreement and the Development Agreement referenced herein constitute the complete and entire agreement between the Developer and the City concerning the subject matter hereof and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than those set forth in these documents. The Developer shall have no direct obligation to Public Users and shall have no responsibility to or relationship with Public Users except to the limited extent and purposes set forth herein. All obligations of the Public Users hereunder may be enforced by the Developer. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the respective parties and their heirs, personal representatives, and permitted successors and assigns. This Agreement shall be governed by and interpreted under the laws of the State of Kansas.

13. Relocation. The owners and operators of the Parking Garage may relocate, restripe, and reconfigure the Parking Spaces and access thereto from time to time, provided that such party uses reasonable efforts to limit any disruption or interruption caused thereby.

14. No Dedication to the Public. This Declaration does not dedicate any of the Parking Garage, Parking Spaces or access thereto for public use or to the public in any manner whatsoever except as expressly set forth herein, as limited herein, and for the time period set forth herein.

15. Liability Limitations. The Developer and all other owners, lessees and operators disclaim any all warranties as to fitness, quality or safety of the Parking Garage, to the fullest extent permitted by law. No Party to this Agreement shall be liable for any damage or injury to Public Users caused by any other Public Users, or for any damage to person or property, including without limitation in connection with any towing or other enforcement of this Agreement or the Rules and Regulations. Nothing in this Section shall constitute a waiver by the City to assert any event of default or to assert any such rights or remedies, or deprive the City of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EPC REAL ESTATE GROUP LLC

By: _____
Name: _____
Title: _____

STATE OF KANSAS)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____ as _____ of EPC Real Estate Group LLC, a Kansas limited liability company.

Notary Public

[SEAL]

WICHITA RIVERFRONT LP

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2022, by _____ as _____ of Wichita Riverfront LP, a Delaware limited partnership.

Notary Public

[SEAL]

CITY OF WICHITA, KANSAS

By: _____
Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on this _____ day of _____, 2022, by Brandon J. Whipple as the Mayor of the City of Wichita, Kansas, and Karen Sublett as the City Clerk of the City of Wichita, Kansas.

Notary Public

[SEAL]

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law
and City Attorney

EXHIBIT "A"

Legal Description

[to be inserted]

EXHIBIT "B"

Rules and Regulations

1. Public Users shall not obstruct any portion of the Parking Garage, nor shall any litter or material be placed in the Parking Garage, nor shall the Parking Garage be used for any purpose except for ingress, egress and parking, nor shall Public Users have any special rights in the Parking Garage on account of its use of the Parking Garage. Public Users shall not store any goods, materials or other property in the Parking Garage. Any such goods, materials or property stored in the Parking Garage may be removed and disposed of at Public Users' sole cost and expense.
2. Public Users shall not use or permit to be brought onto or into the Parking Garage hazardous materials, except those hazardous materials utilized in the normal operation of motor vehicles.
3. Public Users shall not obstruct or interfere with the rights of other Public Users, Project Users, tenants or occupants of the property, nor in any way injure or annoy them, nor do anything which would constitute a nuisance or which would damage the reputation of the owners or operators of the Parking Garage.
4. The bringing into the property or removal therefrom of furniture, fixtures, equipment or supplies, when of large weight or bulk, shall be prohibited, unless consented to in advance in writing by the operator of the Parking Garage, in which case, all damage to the property caused by such deliveries or removals shall be repaired at the expense of Public Users.
5. Public Users shall not burn any trash, rubbish or garbage in or about the property. Public Users shall not store anything in the Parking Garage, including without limitation, trash, rubbish or garbage.
6. Public Users shall comply with these rules and regulations (together with any other rules and regulations for the Parking Garage and any authorized amendment or supplement thereto).
7. Parking areas, entrances, exits, ramps, driveways and cross walks shall not be obstructed in any manner whatsoever and no parking will be permitted in common use rights of way.
8. Public users shall not leave their vehicle unattended in the Parking Garage overnight.

EXHIBIT K

FORM CERTIFICATION OF TIF EXPENDITURES

Request No. _____

Date: _____

Pursuant to the Phase One Development Agreement (the “**Agreement**”) between the City of Wichita, Kansas and the undersigned (the “**Developer**”), the Developer requests reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Agreement.
3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement.
5. Each item listed above has not been previously reimbursed from TIF Funds and no part thereof has been included in any other Certification of TIF Expenditures or other disbursement request previously filed with the City.

EPC REAL ESTATE GROUP, LLC

By: _____

Name: _____

Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

**ATTACHMENT I
TO CERTIFICATION OF TIF EXPENDITURES**

REQUEST NO. _____

DATED _____

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed from TIF Funds	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred
---	--	---

EXHIBIT L
FORM IRB LETTER OF INTENT



[April 26, 2022]

EPC Real Estate Group LLC
8001 Metcalf Avenue, Suite 300
Overland Park, Kansas 66204
Attn: Austin Bradley

Dear Austin:

In accordance with the action taken at its regular meeting held on April 26, 2022, the Mayor of the City of Wichita, Kansas (the “City”), on behalf of the City Council (the “Governing Body”), hereby tenders its written intent to issue, in one or more series, an amount not to exceed \$40,000,000 in City of Wichita, Kansas Taxable Industrial Revenue Bonds (Riverfront Stadium Office Project) (the “Bonds”). Absent subsequent rescission or extension by action of the Governing Body, this intent to issue the Bonds will remain in effect for a period ending December 31, 2024. This letter (the “Letter of Intent”) is an indication of the intent of the City to issue the proposed Bonds, and is subject in all respects to the Governing Body’s final approval of the terms of a Bond Ordinance, Trust Indenture, Site Lease, Project Lease and other related documents for each series of the Bonds (collectively, the “Financing Documents”). In the event that the proposed Bonds are not ultimately issued for any reason, the City shall not be deemed to have assumed or incurred any liability or obligation to EPC Real Estate Group LLC, a Kansas limited liability company (the “Developer”) or any other party by virtue of any proceedings or actions taken in connection therewith.

The purpose of the Bond issue will be to enable the Developer to finance the cost of acquiring, constructing and equipping a commercial, office, and retail development, including parking, and associated site work, infrastructure and utilities to be located at the northwest corner of the intersection of McLean Boulevard and Maple Street in the City (the “Project”), all as more particularly described in the Phase One Development Agreement dated April 29, 2022, among the City, the Developer and Wichita Riverfront LP (the “Development Agreement”). The Project will be leased by the Developer to the City pursuant to a Site Lease and leased by the City back to the Developer or assigns (herein referred to as the “Tenant”) pursuant to a Project Lease.

The Governing Body has also determined that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the “Sales Tax Act”), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. This sales tax exemption has an estimated value of \$906,500. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

The sales tax exemption is within the description of “public incentives” in the City of

Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines") and will be fully subject to the ongoing compliance and repayment provisions of such Guidelines, and the requirements set forth in this Letter of Intent.

This intent to issue the Bonds is given subject to the following conditions:

1. Preparation of an appropriate Bond Ordinance, which will contain a provision pledging the financed property and net earnings therefrom as security for payment of the Bonds, pursuant to K.S.A. 12-1744.
2. Negotiation of a Project Lease (the "Lease") which shall incorporate the following:
 - a) A provision prohibiting assignments or subleases made without the City's consent, subject to any prior City approval of required subleases or those made in accordance with the Development Agreement;
 - b) A provision regarding the Tenant's option to purchase the Project that states a firm option price and the obligation of the Tenant to provide for payment of all other expenses related to the exercise of such option to purchase;
 - c) An agreement that the Tenant will use and operate the Project in accordance with all applicable environmental laws and regulations, and will indemnify and hold the City harmless from any and all liabilities (other than liabilities resulting from environmental contamination primarily caused by the City's own agents or employees) arising under any environmental law or regulation;
 - d) An agreement to obtain all insurance the City may require in connection with the construction, maintenance or operation of the Project, or liabilities arising out of the operation of the Project;
 - e) An agreement requiring the Tenant to comply with the ordinances of the City, as then in existence or as may thereafter be adopted, pertaining to civil rights and equal employment opportunity, as required by Section 2.12.950 of the Code of the City;
 - f) An agreement by the Tenant that it will not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and its use or occupancy of the Project;
 - g) An agreement by the Tenant that it will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000 et seq.; the Code of the City of Wichita Section 2.12.950; and, any laws amendments or regulations promulgated thereunder, including any ordinance of the City presently existing or hereinafter enacted, which pertains to civil rights and equal employment opportunity;
 - h) An agreement by the Tenant that it will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and the Tenant will annually file an Equal Employment Opportunity/Affirmative Action Plan with the City;

- i) An agreement by the Tenant that it will, during the term of the Lease, in addition to performing the Tenant's obligations to pay impositions relating to the Project or its interest therein required by the Lease, (subject to any lawful right to contest the same) timely pay all other *ad valorem* property taxes lawfully levied against the Tenant's real or personal property in Sedgwick County, Kansas;
 - j) An agreement by the Tenant that it will, during the term of the Lease, comply with all applicable governmental laws, rules and regulations applicable to the Project; and
 - k) An agreement by the Tenant that it will, during the term of the Lease, abide by the terms and conditions of this Letter of Intent.
- 3. Execution of guarantees for the payment of the Bonds that may be required by the purchaser or underwriter of the Bonds, (which, for the Tenant, may be in the form of an unconditional guaranty incorporated in the Lease).
- 4. Agreement by the Tenant or other party to the transaction to pay all costs incurred by the City for processing the application to issue the Bonds and in connection with the subsequent issuance of the Bonds.
- 5. Agreement by the Tenant to enter into the City's Administrative Service Fee Agreement providing for annual payments of \$2,500 in each year that the Bonds are outstanding.
- 6. Agreement that, prior to the issuance of the Bonds, the Tenant will have an approved Equal Employment Opportunity/Affirmative Action Plan on file with the City.
- 7. Agreement by the Tenant or other appropriate party to furnish to the City access to any annual financial statements and accompanying audit reports required by the Guidelines.
- 8. Agreement that, prior to issuance of the Bonds, the Tenant will provide proof that all *ad valorem* property taxes on the Project property which are due and owing up to the proposed date of issuance have been paid.
- 9. Agreement that, prior to the issuance of the Bonds, the Tenant will obtain a suitable commitment for a policy of title insurance insuring the title of any real property conveyed to the City in connection with the financing, or if no real property is conveyed to the City, evidence acceptable to the City that the Tenant has title to the real property on which the Project is located.
- 10. An arrangement (such as a Bond Purchase Agreement or a Bond Placement Agreement) for the sale/placement of the Bonds which shall contain suitable indemnification agreements from the Tenant and any underwriter indemnifying and holding the City harmless from liabilities arising from disclosure or registration provisions of state or federal securities laws.
- 11. If the Bonds are to be sold by public sale, agreement that the Tenant will not, while any of the Bonds are outstanding, have a commercial banking relationship with the trustee for the Bond issue; or, if the Bonds are to be privately placed, agreement that the Tenant will not have such a relationship with the trustee for the Bond issue unless the purchasers of the Bonds shall first acknowledge in writing the existence of the relationship and waive any conflict that might exist as a result of such relationship.
- 12. Where the Project involves the acquisition of any interest in real property, an agreement by the Tenant to provide the City, at the time the Lease is submitted for review, an Environmental Site Assessment ("ESA") performed by an independent consultant recognized as an expert in the area

that documents the environmental condition of the property. Bonds generally will not be issued if the ESA discloses environmental conditions that might lead to monetary liability for owners or operators of the property.

13. If the Project involves new construction, substantial renovation or substantial landscaping, the Tenant shall provide the following:
 - a) An agreement to provide the City with documented evidence, prior to the issuance of the Bonds, that the Tenant used procedures that do not exclude qualified Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) from serving as subcontractors, engineers, architects, suppliers and vendors on the Project; and
 - b) If the Project has not been completed at the time the Bonds are issued, a performance bond naming the City and the bond trustee as additional insureds in an amount sufficient to secure completion of the Project.
14. In connection with the Public Incentives approved in connection with the Project, the Lease shall include:
 - a) An agreement by the Tenant to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with the conditions contained in the Development Agreement, including any annual reports required of the Tenant and any inspections of the Tenant's premises or interviews with the Tenant's staff; and
 - b) An agreement that the Tenant may be required to make a payment to the Kansas Department of Revenue in amount of additional Kansas, County or City sales and use tax which the Tenant would have been required to bear on personal property and services obtained for the Project, if such property and services had been obtained with funds of the Tenant rather than with proceeds of the Bonds.
15. Other legal opinions regarding certain aspects of a Bond issuance that may be required by the City Attorney or Bond Counsel.

As a guide for developing the Lease and Bond Ordinance, the terms and provisions of the Development Agreement, to the extent not inconsistent herewith, are incorporated as a part of this Letter of Intent.

A copy of this Letter of Intent is enclosed for your records. Please have the appropriate Tenant representative sign and return the original to the City's Economic Development Office, 455 N. Main Street – 13th Floor, Wichita, Kansas 67202, to evidence the Tenant's acceptance of the terms and conditions hereof.

Sincerely,

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

ACCEPTED:

EPC REAL ESTATE GROUP LLC

By: _____
Name: _____
Title: _____

cc: Tim Goodpasture, Economic Development Analyst
Brian K. McLeod, Esq., Deputy City Attorney
Sarah O. Steele, Esq., Bond Counsel
Developer's Counsel

**City of Wichita
City Council Meeting
April 19, 2022**

TO: Mayor and City Council

SUBJECT: Tourism Business Improvement District - 2023 Scope of Services (All Districts)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve the Tourism Business Improvement District (TBID) 2023 Scope of Services and Budget.

Background: The Wichita Convention and Visitors Bureau d.b.a. Visit Wichita, receives annual funding from the City of Wichita for the promotion of tourism and convention activities. Due to economic conditions, this allocation has experienced limited growth in recent years while competition for tourists and conventions in the state has intensified. In 2013, to address a decrease in funds, Visit Wichita proposed the creation of a Tourism Business Improvement District (TBID) to promote tourism and provide certain related services within the City.

At the March 25, 2014, meeting, the City Council adopted Ordinance 49-677 creating the business improvement district with boundaries the same as the legal limits of the City of Wichita. The TBID Advisory Board members were appointed on April 1, 2014, by the City Council. Upon approval of the ordinance, the City Council also entered into a contract with Visit Wichita to provide services as established by the ordinance and approved by the City Council. Providing services as part of its contract, Visit Wichita has generated a proposed TBID 2023 Scope of Services and Budget. The document has been reviewed and approved by the TBID Board.

Analysis: The attached TBID 2023 Scope of Services and Budget outlines how funds received from a 2.75% nightly hotel room fee will be used to promote tourism in Wichita during 2023.

The budget for 2023 shows that the TBID could generate \$3.1 million in revenues based on STR/Tourism Economics estimate that 2023 hotel revenues will be in line with 2019 actual levels. This will be used to fund leisure and group marketing efforts. Approximately \$1.96 million of revenues will be used towards leisure efforts. An additional \$515,000 will be spent on group marketing efforts. The remainder of the funds, \$630,000, will be used to cover general expenses including personnel, research, City administrative and professional fees.

To best measure the effectiveness of the leisure marketing efforts, since 2015 Visit Wichita has worked with Strategic Marketing & Research Insights, LLC (SMARI). SMARI utilizes data gathered from leisure visitors to establish annual economic impact, return on investment, average number of room nights and paid room nights. Its research measures increase in leisure travel due to the TBID marketing and assists in determining future years' performance measures and budgets.

Financial Considerations: The leisure and group marketing efforts outlined in the 2023 Scope of Services will be completely funded through TBID revenues raised through an annual fee levied on all hotels within the district having 50 rooms or more. The fee is calculated as 2.75% of the amount of the hotel's subject room rentals and funds raised will be deposited in a special revenue fund. The economic impact goal for 2023 leisure marketing is \$70M and the economic impact goal for 2023 group sales

efforts is \$5.74M.

In addition to approving the TBID Scope of Services for 2023, the City Council is also approving the use of carryover funds from 2021. The carryover funds from 2021 total \$831,168 will be used for 2022 activities. The TBID board reviewed and approved the use of the carryover funds during its February 2022 meeting. This includes allocating approximately half of the actual carryover to the summer/fall leisure campaign when travel sentiment studies show American travelers are planning to travel at the highest rates this year. Approximately one-fourth is allocated to the strategic events commitment fund, targeting sports bookings which are returning at the fastest rate, as well as future group bookings. The remaining funds will be allocated to personnel expense.

Legal Considerations: Kansas statutes and the ordinance enacting the TBID require annual preparation of a business plan and budget. The scope of services identified in the 2023 plan is consistent with the services contemplated by the ordinance.

Recommendation/Actions: It is recommended that the City Council approve the Tourism Business Improvement District (TBID) 2023 Scope of Services and Budget.

Attachments: TBID 2023 Scope of Services and Budget

Tourism Business Improvement District 2023 Scope of Services and Budget

Purpose:

The Tourism Business Improvement District (TBID) provides incremental marketing dollars to Visit Wichita to market Wichita; it commenced January 1, 2015. In accordance with Kansas Business Improvement District stature, this document outlines the proposed 2023 scope of services and budget and is presented to the City Council for approval.

Objective:

Market Wichita to both leisure and group visitors to drive incremental hotel demand and enhance Wichita's image as a destination in the regional target markets.

Leisure Business:

Leisure marketing is structured to reach visitors and influence trips to Wichita using an integrated marketing approach that includes traditional television, connected television, digital display and retargeting advertising, and social media marketing. A regional focus will remain on target cities with higher awareness and familiarity of Wichita - including markets within a 350-mile radius. The campaign efforts are measured in an annual ad effectiveness study conducted by SMARI.

Research conducted at the end of 2021 shows that despite the effects of the pandemic, Visit Wichita's marketing efforts successfully drove incremental trips to Wichita. The ad influenced trips generated visitor spending in the community that would not have been realized without the advertising.

2021 February-October Integrated Leisure Marketing Campaign Results:

- Generated 55,000 incremental Wichita leisure trips and brought in \$42.2 million in visitor spending
- For every \$1 spend on advertising, visitors spent \$24 in the community
- Impacted visitor behavior; visitors who saw the ads, spent 16% more in Wichita, stayed longer, and participated in more activities than those that did not see the ads
- Ad-influenced visitors were more likely to use paid accommodations; 91,000 incremental room nights were generated, just 3% below 2019
- Campaign reach was lower than 2019, expected with lower travel incidence due to COVID-19; non-travelers paying less attention to travel ads

2021 Research Key Learnings Applied to 2022 Leisure Advertising:

- Total spend in key target markets, can be reduced following reintroduction of the destination at very high levels in 2021, after being dark 2020
- Maintain year-round presence in key drive markets to maximize ad recall and awareness of the brand
- Use Datafy research to strategically reach people who live in key target markets that fit the ideal demographic via cellphone mobile advertising IDs (MAIDS); tactics include digital display and retargeting, connected television, paid social media, native content, online video, and streaming digital audio
- Add new tactics to reinforce the brand and aid awareness (native content, streaming audio, more storytelling with embedded links to the blogs on VisitWichita.com, and event promotion)
- Creative ratings are lower than optimal, test campaign creative with target audience to ensure messaging resonates and is compelling
- Add new market based on Datafy visitor data

Key Strategic Drivers for 2023 Leisure Advertising:

Execute an integrated marketing campaign that inspires travel and leads to hotel bookings, attraction visits, restaurant dining, retail shopping and supports other partners.

- Maintain 2022 leisure advertising level of spending and media strategy in established markets while remaining flexible to respond to 2021 key learnings and research
- Launch a summer and fall campaign starting in April delivering both brand (traditional television) and tactical (digital, social, public relations, streaming audio, native content, and video) executions in key target markets – Kansas, Kansas City Metro (KS/MO); Tulsa, OK; Oklahoma City, OK; and Joplin, MO
- Sustain digital campaign year round
- Continue second year expanded messaging in Dallas
- Increase focus on generating first-party data, such as email addresses and mobile phone numbers for a more direct business to consumer marketing
- Conduct image/perception research to aid in marketing message to drive increased visitation

2023 Leisure Performance Goal (tracked annually):

- 120K room nights
- \$70M Economic Impact
- \$10,200,000 hotel revenue (\$85 per night)
- \$612,000 total transient guest tax (6%)
- \$280,500 tourism fee (2.75%)
- \$765,000 sales tax (7.5%)
- ROI of \$47:1

Group Business:

Group sales brings meetings, conventions, and sporting events to Wichita through a competitive bid process. These events typically book several years in advance and is measured by confirmed future group bookings through Visit Wichita. Group advertising will resume in 2022 to reinforce the brand through strategic print placements, digital advertising, social media lead generation programs, and social media marketing. The goal is to build regional/national awareness of Wichita as a meeting/sports destination through effective marketing and attendance building tactics.

2021 Group Results:

- 6,970 incremental room nights
- ROI was \$5.21:\$1

Key Strategic Drivers for 2023 Group Advertising:

- Continue with 2022 trade show strategy focusing on appointment-based shows with meeting planners.
- Maximize relationships with meeting planners through pre/post show communication, enhanced exposure at trade shows via sponsorship, and booth engagement
- Host site inspections with key decisions makers to highlight Wichita as a meeting destination
- Re-launch Meeting Planner Advisory Council, halted during the pandemic, to enhance Wichita's presence on regional/national scene and learn key attributes for success
- Implement next phase of sports sales event strategy, with increased presence to capitalize on community facilities
- Produce hosted sporting events and utilize radio, digital billboards, and social media marketing locally to drive ticket sales
- Continue to fund the strategic event commitment fund for aspirational events, rights and bid fees, operational commitments in sports and convention group market

2023 Performance Measurement (tracked annually):

- Group Goal: 16K incremental future room nights
- \$5.74M economic impact
- \$1,360,000 hotel room revenues (\$85 per night)
- \$81,600 total transient guest tax (6%)
- \$37,400 tourism fee (2.75%)
- \$430,440 total sales tax (7.5%)
- ROI \$7.00:\$1

Budget:

REVENUE		2022 Approved	2022 Revised	2023 Recommended
CITY OF WICHITA – TBID				
	TBID Collections	\$2,745,000	\$2,745,000	\$3,100,000
	Carryover ¹¹		\$831,168	
	TOTAL REVENUE	\$2,745,000	\$3,576,168	\$3,100,000
Expenditures		TOTAL	TOTAL	TOTAL
LEISURE				
	Total Leisure Media Buy ¹	\$1,200,000	\$1,575,000	\$1,500,000
	Event Marketing ²	\$30,000	\$78,000	\$50,000
	Agency Planning, Creative, and Production ³	\$400,000	\$400,000	\$350,000
	Other Marketing Initiatives ⁴	\$50,000	\$70,000	\$55,000
	LEISURE TOTAL	\$1,680,000	\$2,123,000	\$1,955,000
GROUP				
	Meeting Planner/Sports Initiatives ⁵	\$285,000	\$285,000	\$265,000
	Publication Advertising ⁶	\$230,000	\$230,000	\$200,000
	Strategic Event Commitments ⁷	\$135,000	\$348,168	\$50,000
	GROUP TOTAL	\$650,000	\$863,168	\$515,000
GENERAL				
	Personnel/ADM ⁸	\$350,000	\$525,000	\$525,000
	Research/ROI ⁹	\$60,000	\$60,000	\$100,000
	Professional Fees ¹⁰	\$5,000	\$5,000	\$5,000
	GENERAL TOTAL	\$415,000	\$590,000	\$630,000
	TOTAL EXPENDITURES	\$2,745,000	\$3,576,168	\$3,100,000

FOOTNOTES ON FOLLOWING PAGE

FOOTNOTES:

1. Media buy (TV, CTV, radio, digital video, print, digital, digital outdoor, social)
 2. Event media buy
 3. Development, creation and production of all elements of marketing campaigns (TV, print, radio, digital, etc.)
 4. Weekly social media videos & 360 platform
 5. Incremental sports and group trade show sponsorships (hosted and future), sales calls, site visits, sports bid fees, etc.
 6. Advertising in key meeting planner publications, digital media buy and sales toolkit for group market
 7. Strategic event commitment fund for aspirational events, rights and bid fees, operational and product expenses in group market.
- As of 1/1/2022 the Strategic Event Commitment Fund balance is \$951,669 of which \$421K is committed to future events.
8. Visit Wichita personnel to execute TBID initiatives
 9. Advertisement effectiveness ROI research
 10. Annual audit and legal fees
 11. Approved by TBID Advisory Council – Feb 4

SMARI Ad Effectiveness Research:

The effectiveness of TBID advertising for 2015 - 2019 was measured by Strategic Marketing & Research, Inc., (SMARI). SMARI's methodology for calculating the impact of a marketing campaign relies on incremental travel. The rate of travel by those who are "unaware" is considered the base rate of travel, which would have been achieved if no advertising were placed. Any travel above this base by "aware" households is considered influenced – or the rate of incremental travel. The final measurements of the success of the marketing campaigns are the economic impact of the campaigns and return on investment that it generates. Again, the SMARI methodology does not consider all travel to the city when making such calculations. Even without any advertising, consumers would travel to Wichita. However, the research identifies those visitors, room nights and spend that would not have occurred without the additional advertising investment. In addition to the ROI, the research also provides insight and recommendations to help guide and refine future marketing campaigns.

**City of Wichita
City Council Meeting
April 19, 2022**

TO: Mayor and City Council Members

SUBJECT: Ordinance Amendments to Section 3.49.020, regarding Licensing of Emergency Wrecker Services

INITIATED BY: Police

AGENDA: New Business

Recommendation: Place the ordinance on first reading and authorize all necessary signatures.

Background: Since at least 1978, the City has utilized a wrecker rotation list to remove vehicles involved in accidents, or are abandoned on the highway causing traffic hazard. Chapter 3.49 of the City Code establishes wrecker rotation list procedures to be utilized by the Wichita Police Department for the removal of vehicles involved in accidents.

Since 2010, the City has had contracts with a number of wrecker companies to tow vehicles impounded by the Wichita Police Department.

As part of these contract negotiations, the police department is recommending ordinance changes to improve the processes to impound vehicles and respond to accident scenes in a timelier manner. Likewise, the Emergency Wrecker Companies would like to discuss methods to streamline current fee structure requirements included in the City's licensing ordinances.

Emergency wrecker companies are currently issued licenses for one year. On February 15, 2022, the ordinances were amended to extend the licenses until May 1, 2022. Staff is continuing to work with the wrecker companies and a further extension of the license term is required.

Analysis: The proposed amendments extend the term of current Emergency Wrecker Licenses until ~~July 1, 2022~~, *June 1, 2022*, to allow the wrecker companies and WPD additional time to discuss proposed ordinance amendments.

Financial Considerations: None

Legal Considerations: The amendments have been prepared and approved as to form by the Law Department.

Recommendations/Actions: Place the ordinance on first reading and authorize all necessary signatures.

Attachments: Clean and delineated ordinances.

Org No. ____

First Published in *The Wichita Eagle* on April 29, 2022

ORDINANCE NO. 51-745

AN ORDINANCE AMENDING SECTION 3.49.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINAL OF SECTION 3.49.020 OF THE CODE OF THE CITY OF WICHITA.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.49.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

~~“License—Required—Nontransferable—Expiration date—Location.~~

No persons may engage in emergency wrecker service inside the City without first obtaining an emergency wrecker company license from the City. Only one license may be issued to each emergency wrecker company. A license is not assignable or transferable. Emergency wrecker company licenses shall be for a twelve-month period. The term of licenses in effect on February 1, 2022, shall be extended, without the necessity of renewal or re-application, until June 1, 2022. All other deadlines for new license applications are extended until June 1, 2022. The license issued to an emergency wrecker company authorizes the licensee and all its bona fide employees to engage in emergency wrecker service. Any person engaging in emergency wrecker services inside the City shall operate from a single location inside the City.”

SECTION 2. The original of Section 3.49.020 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 26th day of April, 2022.

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer Magaña
City Attorney and Director of Law

Org No. ____

DELINEATED

Rev. 4-15-22

First Published in *The Wichita Eagle* on _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 3.49.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINAL OF SECTION 3.49.020 OF THE CODE OF THE CITY OF WICHITA.

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PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2022.

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer Magaña
City Attorney and Director of Law

**City of Wichita
City Council Meeting
April 19, 2022**

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement and Police and Fire Retirement Systems
Actuarial Valuation Reports as of December 31, 2021

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendations: Receive and file the actuarial reports and approve the 2023 employer contribution rates.

Background: The Board of Trustees for both the Wichita Employees' Retirement (WER) System and the Police and Fire (P&F) Retirement System (Retirement Systems) utilize Cheiron (an actuarial consulting firm) to provide actuarial services and information pertaining to each Retirement System. The actuary reviews the Systems' data; prepares an annual valuation of assets and liabilities; and makes an annual determination of the amount of contributions necessary to meet requirements for each System's benefit payments. The actuary reviews the operating experience of the Retirement Systems in accordance with principles of practice prescribed by the Actuarial Standards Board and these results are reported to the Boards.

Analysis: The Retirement Systems are supported by: (1) member contributions; (2) City contributions; and (3) investment income from the Retirement Systems' assets. The funding objective of the WER and P&F Retirement Systems is to establish and receive contributions, (expressed as a percentage of active member pensionable payroll), which will remain approximately level from year to year. To increase the probability of meeting this objective it is important to base annual contribution rate calculations on appropriate key assumptions.

For the December 31, 2021, actuarial valuations, the WER and P&F Board of Trustees approved decreasing the assumed rate of return assumption from 7.50% to 7.25%. Assumptions are an important component of the actuarial valuation process, and the annual contribution rates will experience less volatility if the assumptions are reviewed and adjusted as appropriate. Based on the approved asset allocation policy for system investments, and the long-term capital market projections provided by the system's financial consultant, the Boards lowered the assumed rate of return to 7.25%.

Key results of the actuarial valuations are summarized below:

1. Based on the actuary's valuations, the recommendation for the City's required contribution to the defined benefit plans for the fiscal year beginning January 1, 2023, is 13.0% for the WER System and 21.9% for the P&F System. Contribution rates are stated as a percent of active member pensionable payroll. These rates are based on the benefit provisions and active member contribution rates in effect on December 31, 2021. The City's required contribution to Plan 3, the defined contribution Plan of the WER System, is 4.7%.

2. The funded ratios (liabilities covered by assets) and employer (City) contribution rates for the WER and P&F Retirement Systems over the past five years are shown below:

Wichita Employees' Retirement System

<u>Period</u> <u>Ending 12/31</u>	<u>Budget</u> <u>Year</u>	<u>Funded</u> <u>Ratio</u>	<u>Employer Contributions</u>	
			<u>Pension</u> <u>Trust</u>	<u>Pension</u> <u>Reserve</u>
2017	2019	94.3%	12.1%	0.35%
2018	2020	90.9%	13.7%	0.00%
2019	2021	90.8%	13.9%	0.00%
2020	2022	92.8%	12.9%	0.00%
2021	2023	93.6%	13.0%	0.00%

Police and Fire Retirement System

<u>Period</u> <u>Ending 12/31</u>	<u>Budget</u> <u>Year</u>	<u>Funded</u> <u>Ratio</u>	<u>Employer Contributions</u>	
			<u>Pension</u> <u>Trust</u>	<u>Pension</u> <u>Reserve</u>
2017	2019	95.4%	18.9%	0.5%
2018	2020	90.7%	21.9%	0.0%
2019	2021	91.6%	22.6%	0.0%
2020	2022	94.1%	20.9%	0.0%
2021	2023	94.4%	21.9%	0.0%

3. The actuary's reports reflect the net aggregate experience of the Retirement Systems during the 12 months ended December 31, 2021, resulting in net gains for WER and P&F. The actual market value return on assets for 2021 was 14.6%; however, due to smoothing of prior gains and losses, the rate of return on the actuarial value of assets was 10.7% for WER and 10.8% for P&F compared to the 7.25% investment return assumption.

Financial Considerations: In accordance with the actuary's recommendation regarding the City's actuarial required contribution rates, staff recommends the City's contribution rates, expressed as a percent of active member pensionable payroll, be increased from 12.9% to 13.0% for WER, and increased from 20.9% to 21.9% for P&F for fiscal year 2023.

Legal Considerations: Under the ordinances governing the two pension systems, the City is required to make the actuarial required contributions to the Retirement Systems.

Recommendation/Actions: It is recommended that the City Council receive and file the Wichita Employees' Retirement and Police and Fire Retirement Systems' Actuarial Valuation Reports as of December 31, 2021, and approve the 2023 employer retirement fund contribution rates.

Attachments: Wichita Employees' Retirement System Actuarial Valuation as of December 31, 2021 and Police and Fire Retirement System of Wichita, Kansas, Actuarial Valuation as of December 31, 2021.



Police and Fire Retirement System of Wichita, Kansas

**Actuarial Valuation
as of December 31, 2021**

Produced by Cheiron

March 2022

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Letter of Transmittal	i
Section I Board Summary.....	1
Section II Identification and Assessment of Risk	9
Section III Assets.....	19
Section IV Liabilities.....	24
Section V Contributions	29
Section VI Accounting Statement Information	31
 <u>Appendices</u>	
Appendix A Membership Information.....	35
Appendix B Actuarial Assumptions and Methods	41
Appendix C Summary of Plan Provisions	47
Appendix D Glossary of Terms	52

LETTER OF TRANSMITTAL

March 29, 2022

The Board of Trustees
Police and Fire Retirement System of Wichita, Kansas
City Hall, 12th Floor
455 N. Main Street
Wichita, KS 67202

Dear Members of the Board:

At your request, we have conducted an actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas (PFRS, System, or Plan) as of December 31, 2021. The valuation is organized as follows:

- In Section I **Board Summary**, we describe the purpose of an actuarial valuation and summarize the key results found in this valuation.
- The **Main Body** of the report presents details on the System's:
 - Section II - Identification and Assessment of Risk
 - Section III - Assets
 - Section IV - Liabilities
 - Section V - Contributions
 - Section VI - Accounting Statement Information
- In the **Appendices**, we conclude our report with detailed information describing the System's membership (Appendix A), actuarial assumptions and methods employed (Appendix B), a summary of pertinent plan provisions (Appendix C), and a glossary of terms (Appendix D).

The results of this report rely on future System experience conforming to the underlying assumptions. To the extent that actual System experience deviates from the underlying assumptions, the results will vary accordingly. The demographic actuarial assumptions were adopted by the Board, effective with the December 31, 2018 valuation, based on recommendations from the experience study performed for the period January 1, 2014 through December 31, 2016 prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the actuarial assumptions. While we consider these assumptions reasonable, we have not yet performed our own demographic actuarial experience study.

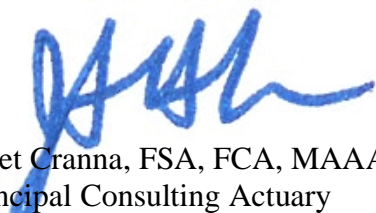
The purpose of this report is to present the annual actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas. This report is for the use of Board and its auditors in preparing financial reports in accordance with applicable law and accounting requirements. The report does not include calculations related to GASB Statements No. 67 and 68, which are provided in a separate report.

In preparing our report, we relied on information (some oral and some written) supplied by the Wichita Retirement Systems staff. This information includes, but is not limited to, plan provisions, employee data, and financial information. We performed an informal examination of the obvious characteristics of the data for reasonableness and consistency in accordance with Actuarial Standards of Practice No. 23.

This report and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices and our understanding of the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board as well as applicable laws and regulations. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this report. This report does not address any contractual or legal issues. We are not attorneys, and our firm does not provide any legal services or advice.

This actuarial report was prepared exclusively for the Police and Fire Retirement System of Wichita, Kansas for the purpose described herein. Other users of this report are not intended users as defined in the Actuarial Standards of Practice, and Cheiron assumes no duty or liability to any other user.

Sincerely,
Cheiron



Janet Cranna, FSA, FCA, MAAA, EA
Principal Consulting Actuary



Jake Libauskas, FSA, FCA, MAAA, EA
Consulting Actuary

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

The primary purpose of the actuarial valuation and this report is to measure, describe and identify as of the valuation date:

- The financial condition of the System,
- Past and expected trends in the financial progress of the System,
- The employer contribution rate for fiscal year 2023, and
- Information required for accounting statements.

In the balance of this Board Summary, we present (A) the basis upon which this year's valuation was completed, (B) the key findings of this valuation including a summary of all key financial results, (C) an examination of the historical trends, and (D) the projected financial outlook for the System.

A. Valuation Basis

The December 31, 2021 valuation results are based on the same actuarial assumptions and methods used in the December 31, 2020 valuation, except for the investment return assumption. The investment return assumption was lowered from 7.50% to 7.25%. The demographic assumptions were based on recommendations from the experience study covering the period January 1, 2014 through December 31, 2016 prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the assumptions. While we consider these assumptions to be reasonable, we have not performed our own demographic actuarial experience study.

This report was prepared using census data and financial information as of December 31, 2021 provided by the Wichita Retirement Systems' staff and does not reflect any subsequent changes in the membership or assets.

Whereas there remains a lot of uncertainty, we continue to monitor developments regarding the COVID-19 pandemic and the impact it may have on the System. Actual experience, both demographic and economic, will be reflected in subsequent valuations as experience emerges.

B. Key Findings of this Valuation

The key results of the December 31, 2021 actuarial valuation are as follows:

- The actuarially determined employer contribution rate for the City as a percent of payroll increased from 20.9% as of December 31, 2020 to 21.9% as of December 31, 2021. Prior to the assumption change, the actuarially determined employer contribution rate was 18.5% of payroll as of December 31, 2021.
- The Unfunded Actuarial Liability increased from \$47.6 million as of December 31, 2020 to \$48.9 million as of December 31, 2021.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

- The System's funded ratio, the ratio of actuarial asset value over liabilities, increased from 94.1% as of December 31, 2020 to 94.4% as of December 31, 2021.
- There was a net actuarial experience gain during the year of \$18.5 million.
 - During the year ended December 31, 2021, the System's assets had a 14.6% return on a market value basis, but due to smoothing of prior investment gains and losses, the return on the actuarial asset value was 10.8% (as compared to last year's 7.50% investment return assumption). This resulted in an actuarial gain on investments of \$24.7 million.
 - On the liability side, the System experienced a total loss of \$6.2 million, primarily due to salary increases greater than assumed. See Table IV-3 for more details.
- The investment return assumption was lowered from 7.50% to 7.25% which increased the Actuarial Liability by \$23.7 million.

POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT

SECTION I – BOARD SUMMARY

Following is Table I-1 which summarizes all the key results of the valuation with respect to the System's membership, assets and liabilities, and contributions. The results are presented and compared for both the current and prior plan year.

Table I-1 Police and Fire Retirement System of Wichita, Kansas Summary of Principal Results			
Valuation as of:	December 31, 2021	December 31, 2020	% change
Participant Counts			
Active Members			
Police	640	629	1.7%
Fire	<u>480</u>	<u>487</u>	(1.4%)
Total	1,120	1,116	0.4%
Retirees and Beneficiaries	1,075	1,060	1.4%
Inactive Vested Members	37	37	0.0%
Inactive Non-Vested Members	<u>17</u>	<u>23</u>	(26.1%)
Total Members	2,249	2,236	0.6%
Annual Projected Payroll	\$81,257,427	\$78,459,642	3.6%
Annual Retirement Allowances for Retired Members and Beneficiaries	41,220,576	39,429,415	4.5%
Assets and Liabilities			
Actuarial Liability (AL)	\$873,565,283	\$813,745,891	7.4%
Actuarial Value of Assets (AVA)	<u>824,660,202</u>	<u>766,121,894</u>	7.6%
Unfunded Actuarial Liability (UAL)	48,905,081	47,623,997	2.7%
Funded Ratio (AVA/AL)	94.4%	94.1%	
Market Value of Assets (MVA)	\$898,696,279	\$805,749,251	11.5%
Funded Ratio (MVA/AL)	102.9%	99.0%	
Contributions as a Percentage of Payroll	Fiscal Year 2023	Fiscal Year 2022	
Employer Normal Cost Rate	17.5%	16.4%	
UAL Amortization Rate	<u>4.4%</u>	<u>4.5%</u>	
Employer Contribution Rate	21.9%	20.9%	

POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT

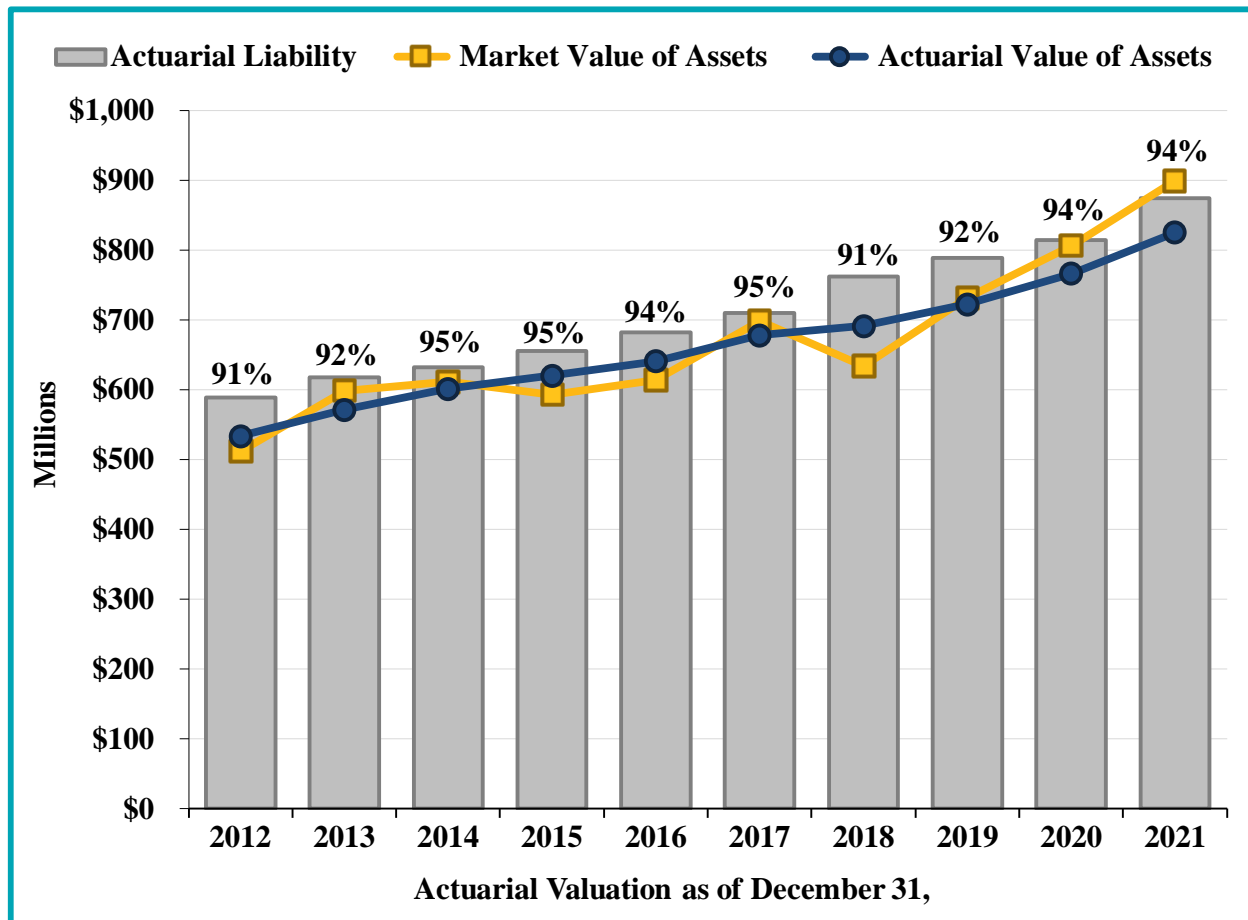
SECTION I – BOARD SUMMARY

C. Historical Trends

Despite the fact that for most retirement systems the greatest attention is given to the current valuation results and in particular the size of the current Unfunded Actuarial Liability and the employer's contribution, it is important to remember that each valuation is merely a snapshot in the long-term progress of a pension system. It is more important to judge a current year's valuation result relative to historical trends, as well as trends expected into the future.

Assets and Liabilities

The chart below shows the last ten years of the Actuarial Liabilities, shown as bars, and assets, shown as lines. The Market Value of Assets (MVA) is shown as the gold line and the smoothed Actuarial Value of Assets (AVA) is shown as the blue line. Above the bars is the funded ratio, which is the ratio of the Actuarial Value of Assets to the Actuarial Liability.



As shown in the prior chart, there was an increase in the MVA from \$806 million to \$899 million, due to a 14.6% return during the past year, which is greater than last year's investment return assumption of 7.50%. The effect of the asset smoothing method, which is

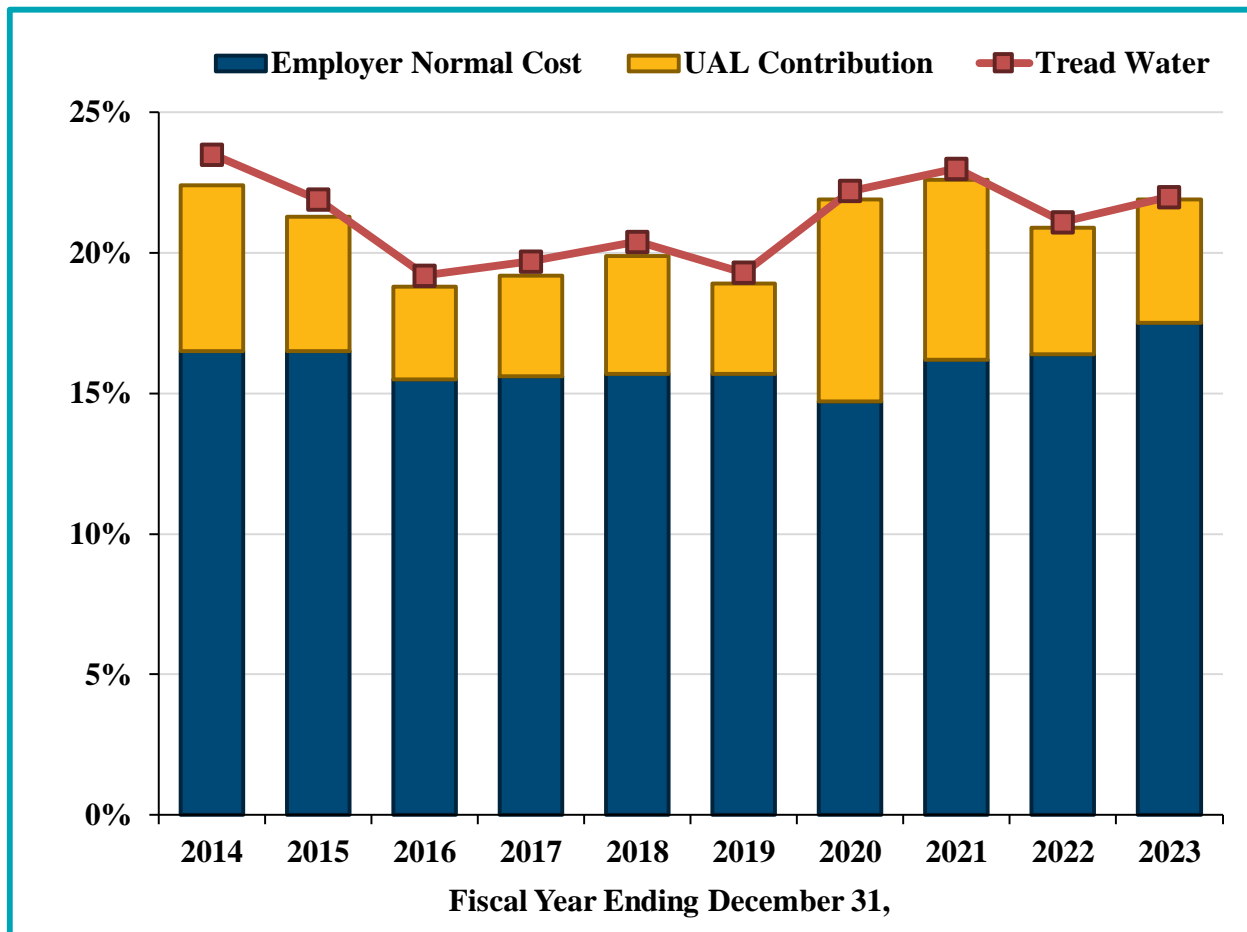
POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT

SECTION I – BOARD SUMMARY

shown as the AVA, has tracked a smoother path through the volatility of the market over recent years. The AVA return for 2021 was 10.8%. This chart also shows that the funded ratio has been stable during this period, fluctuating between 91% and 95% for the past ten years.

Contribution Rates

The bars in the chart below show the employer contribution rates for the last ten years. The blue bar is the employer normal cost rate and the gold bar is the Unfunded Actuarial Liability (UAL) contribution rate. The red line shows the tread water contribution rate, which is the employer normal cost plus interest on the UAL as a percentage of projected payroll. The tread water line shows the minimum contribution rate needed to avoid an increase in the UAL. The employer contribution rates have been slightly less than the tread water contribution rates for the last ten years. The employer contribution rate increased from 20.9% of payroll for 2022 to 21.9% of payroll for 2023 primarily due to the reduction in the investment return assumption which was partially offset by the actual investment return being greater than assumed during 2021.

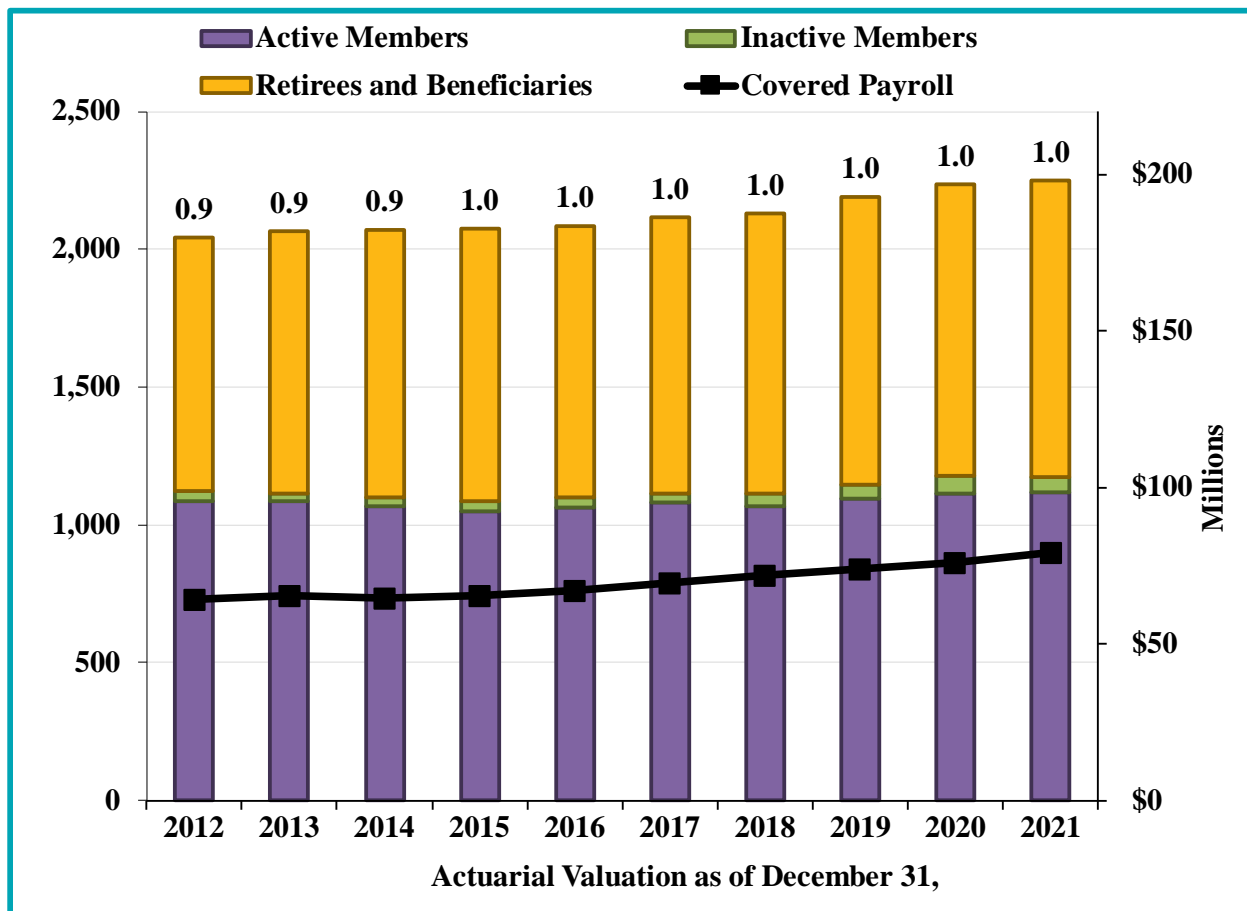


POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT

SECTION I – BOARD SUMMARY

Membership Trends

The chart below shows the membership counts and covered payroll of the System for the last ten valuations. The numbers which appear above each bar represent the ratio of the number of inactive members to active members at each valuation date and provides a measure of the maturity of the System. This ratio is referred to as the support ratio. The support ratio has generally been stable over this period. In 2012, each active supported 0.9 inactive members and in 2021 each active supports 1.0 inactive members. As the System matures and the support ratio increases, the System will likely experience more volatility in contribution rates when actuarial gains and losses are recognized.



**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

D. Future Expected Financial Trends

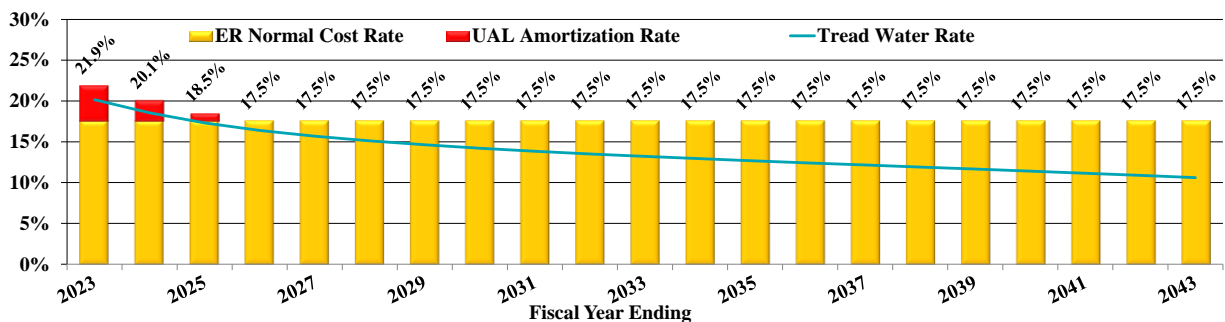
The analysis of projected financial trends is perhaps the most important component of this valuation. In this section, we present the implications of the December 31, 2021 valuation results in terms of (1) the projected employer contributions, and (2) projected System's funded status (ratio of assets over liabilities). We assume future investment returns of 7.25% each year. The projections assume there will be no future gains or losses on the liability and that covered payroll increases at 3.25% per year.

1. Contribution Rate Projections

The chart shows the projected employer normal cost rate (gold bars), UAL amortization rate (red bars), and tread water rate (blue line). The projected actuarially determined employer contribution rates (gold bars plus red bars) are shown above the bars for each year.

Baseline returns of 7.25%

The chart below shows that the employer contribution rate is projected to decrease over the 20-year period from 21.9% for 2023 to 17.5% for 2026 and thereafter. These projections assume that the System earns the assumed investment rate of return of 7.25% on market value each year. The employer contribution rates are projected to decrease over the next few years as deferred investment gains are recognized in the Actuarial Value of Assets. Once the System reaches 100% funded, the employer contribution rate is equal to the employer normal cost rate.



POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT

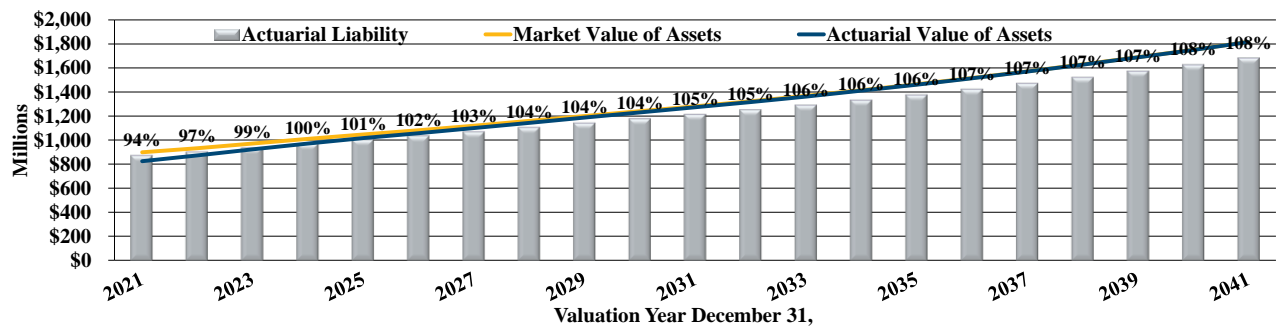
SECTION I – BOARD SUMMARY

2. Asset and Liability Projections

This next projection chart compares the Market Value of Assets (gold line) and the actuarial or smoothed value of assets (blue line) to the System's Actuarial Liabilities (gray bars). In addition, above the bars, we show the System's funded ratio (ratio of Actuarial Value of Assets to Actuarial Liabilities). The projections assume that the employer contribution rates, as shown in the previous charts, are made each year. The years shown in the chart signify the valuation date as of December 31st.

Baseline returns of 7.25%

Assuming that the System earns the assumed investment rate of 7.25%, the funded ratio will increase from 94% to 108% during the 20-year projection period. The UAL is projected to decrease as deferred investment gains are recognized in the Actuarial Value of Assets and the System is projected to reach 100% funded in 2024.



**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Actuarial valuations are based on a set of assumptions about future economic and demographic experience. These assumptions represent a reasonable estimate of future experience, but actual future experience will undoubtedly be different and may be significantly different. This section of the report is intended to identify the primary risks to the System, provide some background information about those risks, and provide an assessment of those risks. Some of the charts within this section compare measures calculated for the Police and Fire Retirement System of Wichita, Kansas to plans within the Public Plans Database. Information regarding this data can be found at <https://publicplansdata.org/>.

Identification of Risks

The fundamental risk to a pension plan is that the contributions needed to pay the benefits become unaffordable. While we believe it is unlikely that the System by itself would become unaffordable, the contributions needed to support the System may differ significantly from expectations. While there are a number of factors that could lead to contribution amounts deviating from expectations, we believe the primary sources are:

- Investment risk,
- Interest rate risk,
- Longevity and other demographic risks, and
- Assumption change risk.

Other risks that we have not identified may also turn out to be important.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

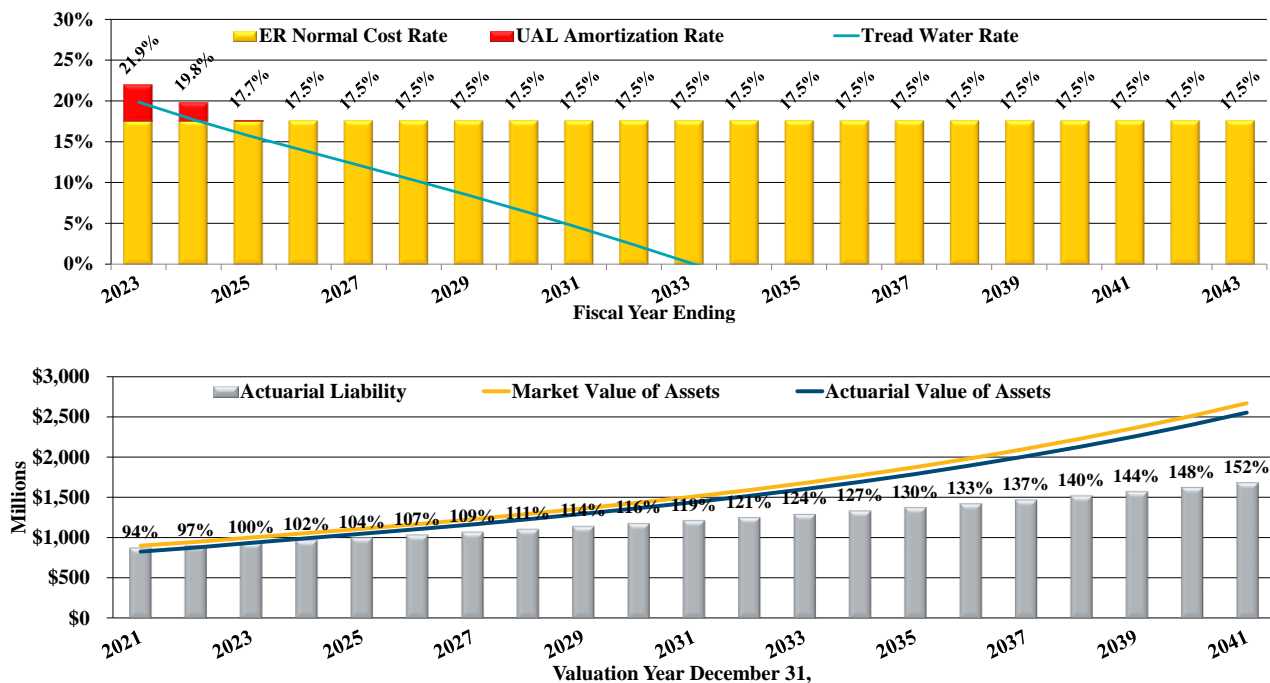
Investment risk is the potential for investment returns to be different than expected. Lower investment returns than anticipated will increase the UAL necessitating higher contributions in the future unless there are other gains that offset these investment losses. The potential volatility of future investment returns is determined by the System’s asset allocation, and the affordability of the investment risk is determined by the amount of assets invested relative to the size of the plan sponsor or other contribution base.

For stress testing purposes, we include two scenarios to illustrate the impact actual investment returns may have on future funded status and contribution amounts compared to the baseline scenario presented at the end of Section I of this report. The two scenarios are (1) optimistic returns of 8.75% each year and (2) pessimistic returns of 5.75% each year.

As with the baseline, we present the implications of the December 31, 2021 valuation results in terms of the projected employer contributions, and projected System’s funded status (ratio of assets over liabilities).

1. Optimistic returns of 8.75%

If the System earns 1.50% greater than the assumed rate in each year of the projection, the employer contribution rate will steadily decrease to the employer normal cost rate of 17.5% by 2026. The funded ratio is projected to increase to 100% by 2024 and 152% by the end of the 20-year projection period.

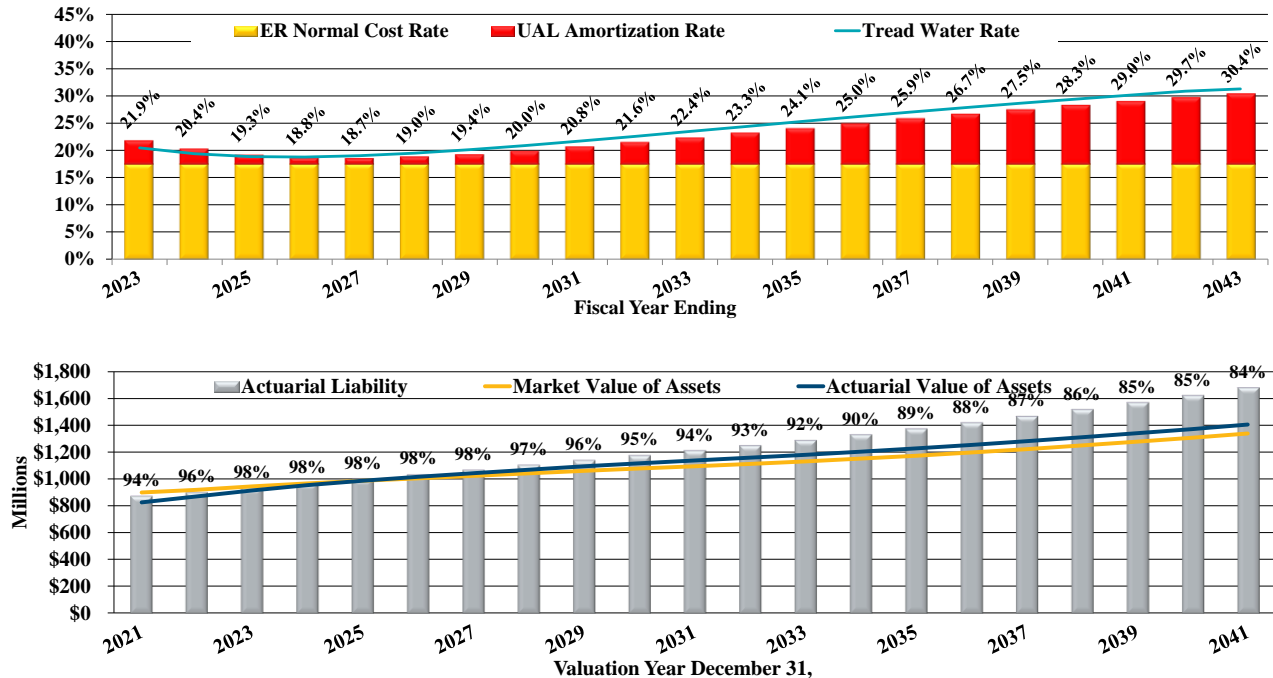


**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

2. Pessimistic returns of 5.75%

If the System earns 1.50% less than the assumed rate in each year of the projection, the employer contribution rate will decrease for a few years before steadily increasing to 30.4% by the end of the 20-year projection period. The funded ratio will increase for a few years before decreasing to 84% by the end of the 20-year projection period due to the investment losses and employer contribution rates being less than tread water rates.

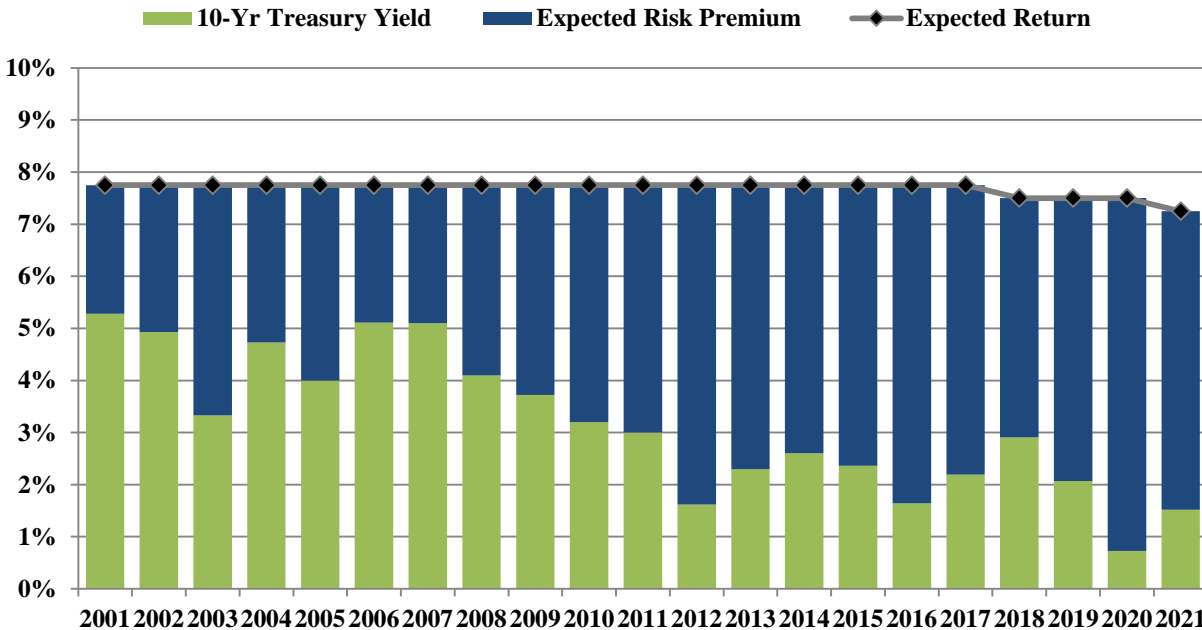


**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Interest rate risk is the potential for interest rates to be different than expected. For public plans, short-term fluctuations in interest rates have little or no effect as the Plan’s liability is usually measured based on the expected return on assets. Longer term trends in interest rates, however, can have a powerful effect. The chart below shows the yield on a 10-year Treasury security compared to the System’s assumed rate of return. The difference is a simple measure of the amount of investment risk taken. As interest rates have declined, plans faced a choice: maintain the same level of risk and reduce the expected rate of return, maintain the same expected rate of return and take on more investment risk, or some combination of the two strategies. As shown below, even though PFRS has decreased the discount rate during the period, the amount of risk has increased as interest rates have dropped more than the discount rate.

Wichita Police and Fire Expected Risk Premium



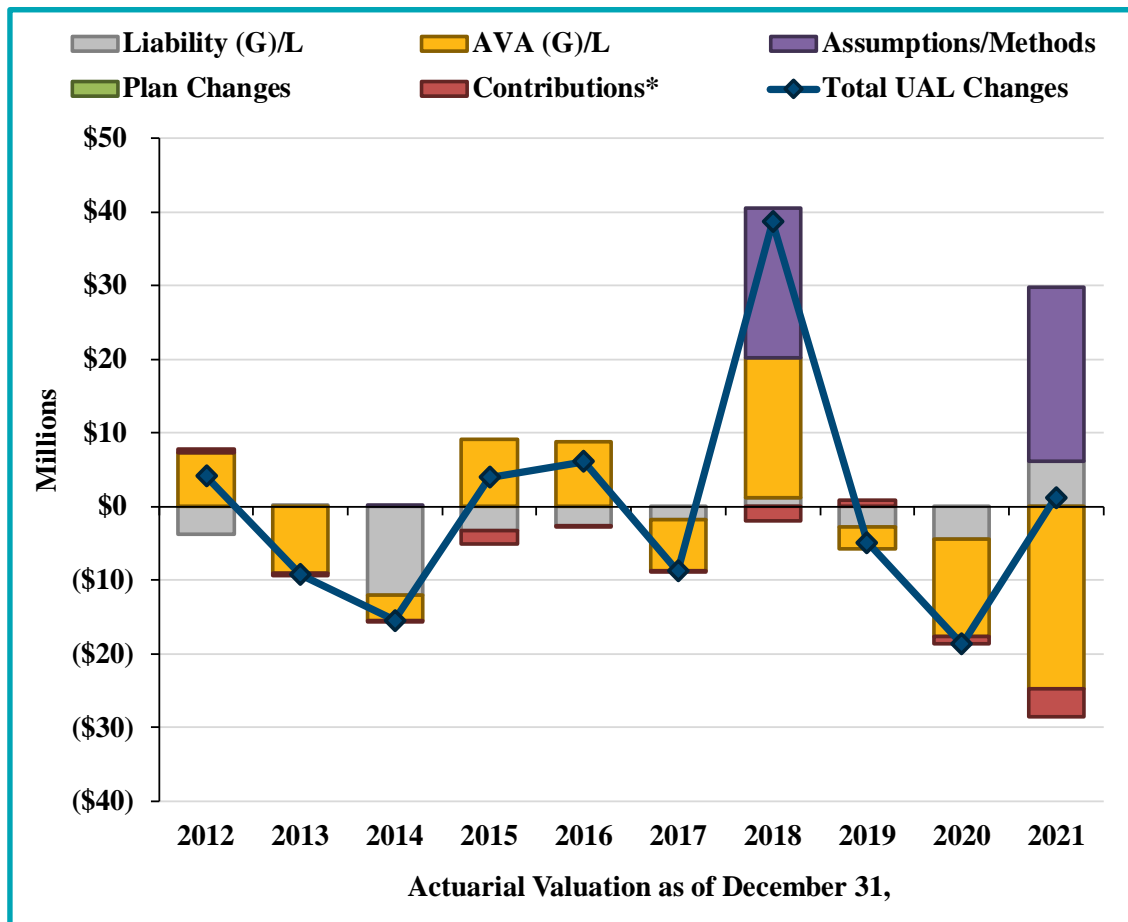
**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Longevity and other demographic risks are the potential for mortality or other demographic experience to be different than expected. Generally, longevity and other demographic risks emerge slowly over time and are often dwarfed by other changes, particularly those due to investment returns. The System has experienced liability gains in seven of the last ten years with losses occurring in 2013, 2018, and 2021.

Assumption change risk is the potential for the environment to change such that future valuation assumptions are different than the current assumptions. Increases in UAL from assumption changes were related to experience studies in which demographic and economic assumptions were adjusted. Assumption change risk is an extension of the other risks identified, but rather than capturing the risk as it is experienced, it captures the cost of recognizing a change in environment when the current assumption is no longer reasonable.

The chart below shows the components of changes in the UAL over the last ten years, which demonstrates how many of the risks mentioned above impact the financial status of the System. While a lot of attention is given to the demographic assumptions, the primary risk for the health of the System is the return on investments earned each year.



* UAL change due to contributions (greater)/less than normal cost-plus interest on the UAL.

Table II-1 summarizes the changes in the UAL over the last ten years.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Table II-1 Changes in Unfunded Actuarial Liability (Dollar amounts in millions)											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Discount Rate	7.75%	7.75%	7.75%	7.75%	7.75%	7.75%	7.50%	7.50%	7.50%	7.25%	
Source											
AVA (G)/L	\$ 7.3	\$ (9.1)	\$ (3.4)	\$ 9.1	\$ 8.8	\$ (6.8)	\$ 19.0	\$ (3.0)	\$ (13.2)	\$ (24.7)	\$ (16.0)
Liability (G)/L	(3.7)	0.1	(12.0)	(3.3)	(2.6)	(1.8)	1.2	(2.8)	(4.4)	6.2	(23.2)
Assumptions/Methods	0.0	0.0	0.2	0.0	0.0	0.0	20.4	0.0	0.0	23.7	44.3
Plan/Policy Changes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contributions*	0.6	(0.2)	(0.3)	(1.9)	(0.0)	(0.1)	(1.9)	0.9	(1.0)	(3.9)	(7.8)
Net UAL Change	\$ 4.2	\$ (9.2)	\$ (15.5)	\$ 3.9	\$ 6.1	\$ (8.7)	\$ 38.7	\$ (4.9)	\$ (18.6)	\$ 1.3	\$ (2.6)

* UAL change due to contributions (greater)/less than normal cost plus interest on the UAL

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

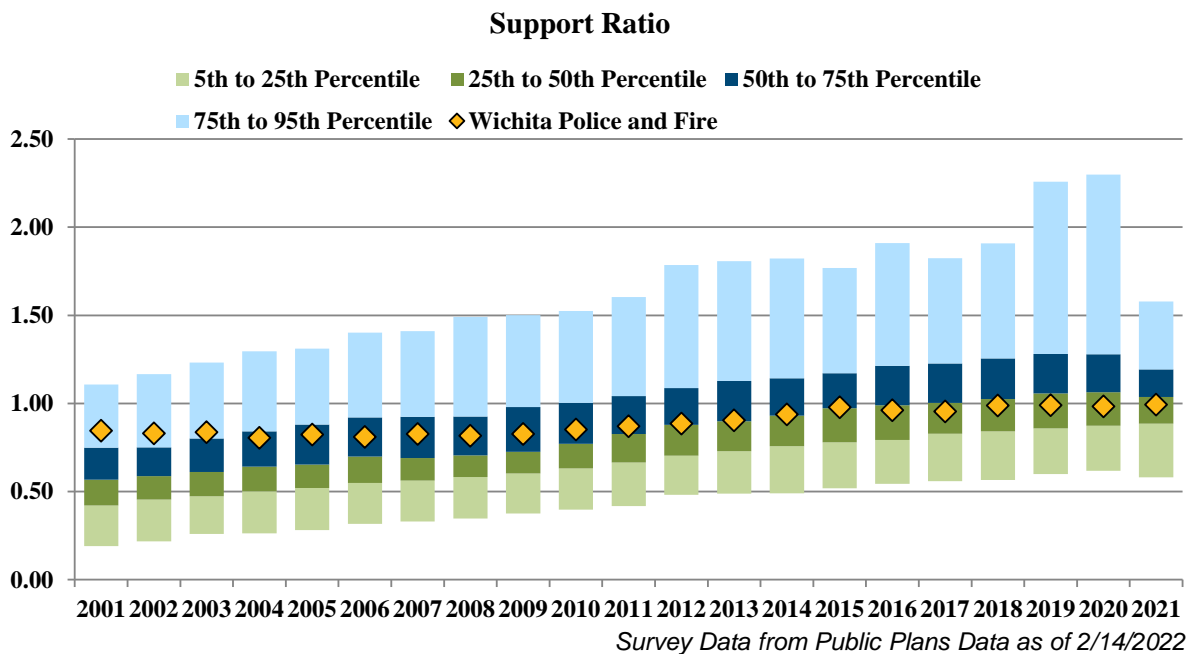
Plan Maturity Measures

The future financial condition of a mature pension plan is more sensitive to each of the risks identified above than a less mature plan. It is important to understand the maturity of this System compared to other plans and how the maturity has changed over time.

Plan maturity can be measured in a variety of ways, but they all get at one basic dynamic – the larger the Plan is compared to the contribution or revenue base that supports it, the more sensitive the Plan will be to risk. The measures below have been selected as the most important in understanding the primary risks identified for this System.

Inactives per Active (Support Ratio)

One simple measure of plan maturity is the ratio of the number of inactive members (those receiving benefits or entitled to a deferred benefit) to the number of active members. This ratio is referred to as the support ratio. The revenue base supporting the Plan is usually proportional to the number of active members, so a relatively high support ratio indicates a larger plan relative to its revenue base.



The chart above shows the distribution from the 5th to 95th percentile of support ratios for the Plans in the Public Plans Database. The gold diamond shows how the Police and Fire Retirement System of Wichita, Kansas compares to the other plans, which has trended down relative to other plans and is currently below the median.

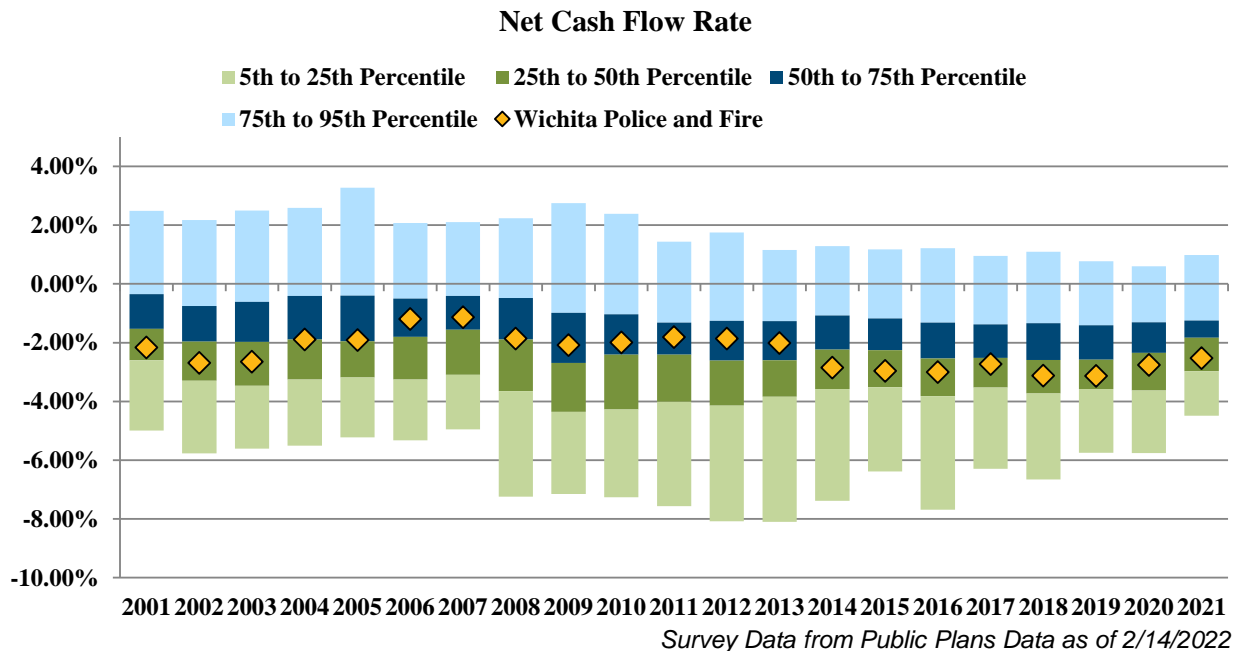
**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

The System's support ratio has recently been in the 25th to 50th percentile of the Public Plans Database meaning that the System is less mature than the average plan in the Database. The System's support ratio has remained fairly level and increased only slightly over the period compared to a steady increase for most plans in the Database. The System's support ratio was initially in the 75th to 95th percentile, but has decreased over the period relative to other plans and has been in the 25th to 50th percentile for the past few years.

Net Cash Flow

The net cash flow of the Plan as a percentage of the end of year assets indicates the sensitivity of the Plan to short-term investment returns. Net cash flow is equal to contributions less benefit payments. Mature plans can have large amounts of benefit payments compared to contributions, particularly if they are well funded, which is the case for this System. Investment losses in the short-term are compounded by the net withdrawal from the Plan leaving a smaller asset base to try to recover from the investment losses. Large negative cash flows can also create liquidity issues.



The chart above shows the distribution from the 5th to 95th percentile of net cash flow for the Plans in the Public Plans Database. The gold diamond show how the System compares. From 2006 to 2013, the System's net cash flow was in the 50th to 75th percentile. Since 2014, the System has been in the 25th to 50th percentile compared to other plans. Based on this measure, the System has become more mature over time, but this is partially because the contributions are lower than other plans in the Database that are less well funded.

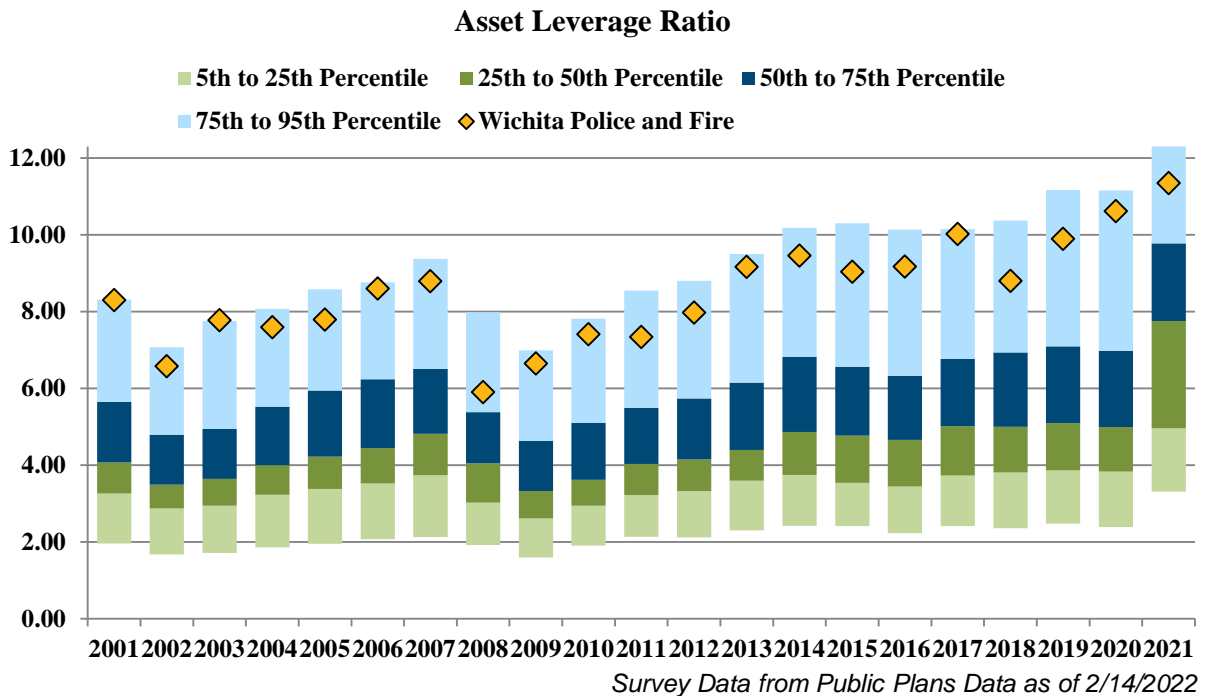
**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Leverage Ratios

Leverage or volatility ratios measure the size of the Plan compared to its revenue base more directly. An asset leverage ratio of 5.0, for example, means that if the System experiences a 10% loss on assets compared to the expected return, the loss would be equivalent to 50% of payroll.

The same investment loss for a system with an asset leverage ratio of 10.0 would be equivalent to 100% of payroll. As the System becomes better funded, the asset leverage ratio will increase, and if it was 100% funded, the asset leverage ratio would equal the liability leverage ratio.

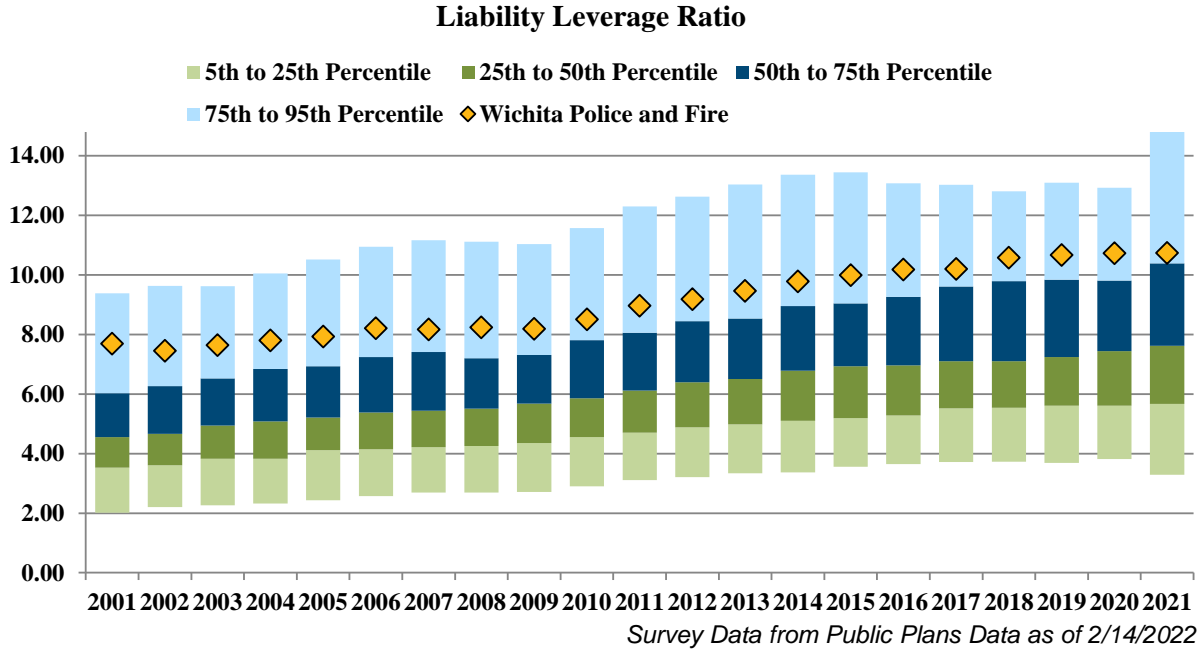


The chart above shows the distribution from the 5th to 95th percentile of asset leverage ratios for the Plans in the Public Plans Database. The gold diamond shows how the System compares. The System's asset leverage ratio has historically been in the 75th to 95th percentile compared to other plans. Based on this measure, the System is among the most mature plans in the Database partially because it is better funded than most plans in the Database.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Similar to the asset leverage ratio, a liability leverage ratio of 5.0 means that if the System experiences a 10% loss on liabilities, the liability loss would be equivalent to 50% of payroll.



The chart above shows the distribution from the 5th to 95th percentile of liability leverage ratios for the plans in the Public Plans Database. The gold diamond shows how the System compares.

The System’s liability leverage ratio has historically been in the 75th to 95th percentile compared to other plans, meaning that the System is more sensitive to risk compared to the average plan in the Database. As the System matures and more of the liability is due to inactive members, this ratio will continue to increase. The ratio has increased from about 7.7 in 2001 to a ratio of about 10.7 in 2021.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Pension plan assets play a key role in the financial operation of the System and in the decisions the Trustees may make with respect to future deployment of those assets. The level of assets, the allocation of assets among asset classes, and the methodology used to measure assets will likely impact benefit levels, employer contributions, and the ultimate security of members' benefits.

In this section, we present detailed information on the System assets including:

- Disclosure of the System assets as of December 31, 2020 and December 31, 2021;
- Statement of the changes in market values during the year;
- Development of the Actuarial Value of Assets;
- An assessment of investment performance; and
- A projection of the System's expected cash flows for the next ten years.

Disclosure

There are two types of asset values disclosed in this valuation, the Market Value of Assets and the Actuarial Value of Assets. The market value represents a “snap-shot” or “cash-out” value which provides the principal basis for measuring financial performance from one year to the next. Market values, however, can fluctuate widely with corresponding swings in the marketplace. As a result, market values are usually not as suitable for long-range planning as are the Actuarial Value of Assets which reflect smoothing of annual investment returns.

Table III-1 below discloses and compares the Market Value of Assets as of December 31, 2020 and December 31, 2021.

Table III-1				
Statement of Assets at Market Value as of December 31,				
Assets	2021	2020	% change	
Cash	\$ 105,124	\$ 102,193	2.9%	
Receivables	8,956,816	4,881,940	83.5%	
U.S. Government Securities	21,387,277	20,238,463	5.7%	
Fixed Income	157,074,817	140,419,837	11.9%	
Domestic Equity	378,078,923	332,443,202	13.7%	
International Equity	240,530,717	224,374,223	7.2%	
Real Estate	57,918,520	48,020,231	20.6%	
Timber	40,048,439	42,384,472	(5.5%)	
Derivatives	136,393	236,637	(42.4%)	
Accounts Payable	(1,601,607)	(1,579,377)	1.4%	
Investment Purchases Pending	<u>(3,939,140)</u>	<u>(5,772,570)</u>	(31.8%)	
Market Value of Assets	\$ 898,696,279	\$ 805,749,251	11.5%	

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Changes in Market Value

Table III-2 below shows the components of change between the Market Value of Assets as of December 31, 2020 and December 31, 2021.

Table III-2 Changes in Market Values	
Market Value of Assets as of December 31, 2020	\$ 805,749,251
Additions	
Employee Contributions	\$ 6,682,182
Employer Contributions	17,889,908
Interest and Dividends	38,088,612
Net Investment Return	<u>78,176,755</u>
Total Additions	140,837,457
Deductions	
Benefit Payments	\$ 46,710,855
Administrative Expenses	556,934
Refunds	<u>622,640</u>
Total Deductions	47,890,429
Market Value of Assets as of December 31, 2021	\$ 898,696,279

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Actuarial Value of Assets

The Actuarial Value of Assets (AVA) represents a “smoothed” value developed by the actuary to reduce, or eliminate, erratic results which could develop from short-term fluctuations in the Market Value of Assets (MVA). For this System, the Actuarial Value of Assets is calculated as the expected Actuarial Value of Assets plus 25% of the difference between the expected Actuarial Value of Assets and the actual Market Value of Assets. The expected Actuarial Value of Assets is calculated based on the prior year’s Actuarial Value of Assets, plus net cash flows, plus an expected return of 7.50% for the year ended December 31, 2021. If the resulting Actuarial Value of Assets is less than 80% or more than 120% of the market value, an adjustment is made to the actuarial value to bring the value within this corridor. Table III-3 illustrates the calculation of the Actuarial Value of Assets for the December 31, 2021 valuation.

Table III-3 Development of Actuarial Value of Assets	
Actuarial Value of Assets as of December 31, 2020	\$ 766,121,894
Employee Contributions	\$ 6,682,182
Employer Contributions	17,889,908
Benefit Payments and Refunds	<u>(47,333,495)</u>
Net Cash Flow	\$ (22,761,405)
Expected Return at 7.50%	\$ 56,621,020
Expected Value as of December 31, 2021	\$ 799,981,509
Market Value of Assets as of December 31, 2021	898,696,279
Difference Between Expected AVA and Actual Market Value of Assets	\$ 98,714,770
Initial Actuarial Value of Assets	\$ 824,660,202
Corridor for Actuarial Value of Assets	
80% of Market Value of Assets	\$ 718,957,023
120% of Market Value of Assets	1,078,435,535
Actuarial Value of Assets as of December 31, 2021	\$ 824,660,202
Actuarial Value of Assets Divided by Market Value of Assets	91.8%
Market Value of Assets Less Actuarial Value of Assets	\$ 74,036,077

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Investment Performance

The Market Value of Assets (MVA) returned 14.6% during plan year ending December 31, 2021, which is more than the assumed 7.50% return for the year. A return of 10.8% was experienced on the Actuarial Value of Assets (AVA), resulting in an actuarial gain for the year. Below, we show additional historical returns.

Table III-4 Historical Returns		
Fiscal Year	MVA	AVA
2012	13.3%	6.3%
2013	19.6%	9.5%
2014	5.1%	8.4%
2015	-0.1%	6.2%
2016	6.7%	6.3%
2017	17.0%	8.8%
2018	-6.5%	4.9%
2019	19.2%	7.9%
2020	13.5%	9.4%
2021	14.6%	10.8%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Projection of System's Future Cash Flows

Table III-5 Projection of System's Expected Cash Flows			
Year Beginning January 1,	Benefit Payments	Employer and Employee Contributions	Net Cash Flow
2022	\$53,629,962	\$22,670,822	(\$30,959,140)
2023	50,956,186	24,246,607	(26,709,579)
2024	54,175,137	23,475,372	(30,699,765)
2025	57,850,165	22,807,277	(35,042,888)
2026	62,043,224	22,625,042	(39,418,182)
2027	62,955,099	23,360,356	(39,594,743)
2028	64,413,467	24,119,567	(40,293,900)
2029	66,837,653	24,903,453	(41,934,200)
2030	70,983,277	25,712,815	(45,270,462)
2031	73,739,391	26,548,482	(47,190,909)

Expected contributions assume contribution rates as shown in the graph on page 7 and that payroll will increase at the actuarially assumed rate of 3.25% per year. Expected benefit payments are projected for the closed group valued at December 31, 2021. Projecting any farther than ten years using a closed group would not yield reliable predictions due to the omission of new hires.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

In this section, we present detailed information on the System liabilities including:

- **Disclosure** of the System liabilities as of December 31, 2020 and December 31, 2021, and
- Statement of **changes** in the Unfunded Actuarial Liability during the year.

Disclosure

Several types of liabilities are calculated and presented in this report. Each type is distinguished by the people ultimately using the figures and the purpose for which they are using them.

- **Present Value of All Future Benefits:** Used for measuring all future System obligations, represents the amount of money needed today to fully fund all benefits of the System both earned as of the valuation date and those expected to be earned in the future by current plan members, under the current plan provisions.
- **Actuarial Liability:** Calculated as of the valuation date as the Present Value of Benefits allocated to service prior to that date. The Actuarial Liability is determined using the Entry Age Normal method.

These liabilities are for funding purposes and are not appropriate for measuring the cost of settling plan liabilities by purchasing annuities or paying lump-sums.

Table IV-1, which follows, discloses each of these liabilities for the current and prior valuations. With respect to each disclosure, a subtraction of the appropriate value of plan assets yields, for each respective type, a **net surplus** or an **Unfunded Liability**.

Table IV-1			
Liabilities/Net (Surplus)/Unfunded			
	December 31, 2021		December 31, 2020
<u>Present Value of Future Benefits</u>			
Active Member Benefits	\$	557,524,894	\$ 512,353,364
Retiree, Disabled and Beneficiaries Benefits		486,357,528	454,479,799
Inactive Member Benefits		<u>12,832,670</u>	<u>12,274,327</u>
Present Value of Future Benefits (PVB)	\$	1,056,715,092	\$ 979,107,490
<u>Actuarial Liability</u>			
Active Member Benefits	\$	374,375,085	\$ 346,991,765
Retiree, Disabled and Beneficiaries Benefits		486,357,528	454,479,799
Inactive Member Benefits		<u>12,832,670</u>	<u>12,274,327</u>
Actuarial Liability (AL)	\$	873,565,283	\$ 813,745,891
Actuarial Value of Assets (AVA)	\$	<u>824,660,202</u>	\$ <u>766,121,894</u>
Net (Surplus)/Unfunded (AL-AVA)	\$	48,905,081	\$ 47,623,997

SECTION IV – LIABILITIES

Changes in Unfunded Actuarial Liability

Each of the liabilities disclosed in the prior table are expected to change at each valuation. The components of that change, depending upon which liability is analyzed, can include:

- New hires since the last valuation
- Benefits accrued since the last valuation
- System amendments changing benefits
- Passage of time which adds interest to the prior liability
- Benefits paid to retirees since the last valuation
- Members retiring, terminating, or dying at rates different than expected
- A change in actuarial or investment assumptions
- A change in the actuarial funding method

The Unfunded Actuarial Liability will change because of all of the above, and also due to changes in plan assets resulting from:

- Employer contributions more or less than trend water (normal cost-plus interest on the UAL)
- Investment earnings different than expected
- A change in the method used to measure plan assets

In each valuation, we report on those elements of change which are of particular significance, potentially affecting the long-term financial outlook of the System. Below, we present the reconciliation of the Unfunded Actuarial Liability since the last valuation.

In the table that follows, we show the components of change in the Actuarial Liability between December 31, 2020 and December 31, 2021.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-2 Development of Experience (Gain)/Loss			
	Actuarial Liability	Actuarial Value of Assets	Unfunded Actuarial Liability
Value as of December 31, 2020	\$ 813,745,891	\$ 766,121,894	\$ 47,623,997
Changes for the year:			
Normal Cost	\$ 16,786,611	\$ 0	\$ 16,786,611
Contributions	0	24,572,090	(24,572,090)
Benefit Payments	(47,333,495)	(47,333,495)	0
Expected Interest	60,547,020	56,621,020	3,926,000
Change in Methods/Assumptions	23,661,770	0	23,661,770
Change in Benefits	<u>0</u>	<u>0</u>	<u>0</u>
Expected Value as of December 31, 2021	\$ 867,407,797	\$ 799,981,509	\$ 67,426,288
Actual Value as of December 31, 2021	\$ 873,565,283	\$ 824,660,202	\$ 48,905,081
Actuarial (Gain)/Loss	\$ 6,157,486	\$ (24,678,693)	\$ (18,521,207)

In addition, we breakdown the change in Actuarial Liability further by showing the liability (gain)/loss by source, as shown in Table IV-3 below.

Table IV-3 Liability (Gain)/Loss by Source as of December 31, 2021	
Service and Salary Increases	\$ 3,679,891
Retirements	2,232,771
Terminations	(576,208)
Disabilities	(1,367,413)
Pre-Retirement Mortality	(990,118)
Post-Retirement Mortality	488,337
New Hires	640,786
Other Demographic Changes	<u>2,049,440</u>
Total Liability (Gain)/Loss	\$ 6,157,486

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-4 Present Value of Future Benefits (PVFB) As of December 31, 2021				
	Plan A	Plan B	Plan C	Total
Active Members				
Retirement Benefits	\$ 984,933	\$ 0	\$ 473,254,695	\$ 474,239,628
Disability Benefits	0	0	60,267,513	60,267,513
Pre-Retirement Death Benefits	0	0	5,887,790	5,887,790
Termination Benefits	0	0	17,129,963	17,129,963
Total	\$ 984,933	\$ 0	\$ 556,539,961	\$ 557,524,894
Inactive Vested Members	\$ 0	\$ 0	\$ 12,423,959	\$ 12,423,959
Inactive Non-Vested Members	\$ 0	\$ 0	\$ 408,711	\$ 408,711
In Pay Members				
Retirees	\$ 113,586,377	\$ 10,175,500	\$ 262,303,266	\$ 386,065,143
Disabled Members	11,538,304	450,883	47,205,457	59,194,644
Beneficiaries	20,182,754	7,752,872	13,162,115	41,097,741
Total	\$ 145,307,435	\$ 18,379,255	\$ 322,670,838	\$ 486,357,528
Grand Total	\$ 146,292,368	\$ 18,379,255	\$ 892,043,469	\$ 1,056,715,092

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-5 Actuarial Liability As of December 31, 2021					
	Plan A	Plan B	Plan C	Total	
Active Members					
Present Value of Future Benefits	\$ 984,933	\$ 0	\$ 556,539,961	\$ 557,524,894	
Present Value of Future Normal Cost	<u>0</u>	<u>0</u>	<u>(183,149,809)</u>	<u>(183,149,809)</u>	
Actuarial Liability	\$ 984,933	\$ 0	\$ 373,390,152	\$ 374,375,085	
Inactive Vested Members	\$ 0	\$ 0	\$ 12,423,959	\$ 12,423,959	
Inactive Non-Vested Members	\$ 0	\$ 0	\$ 408,711	\$ 408,711	
In Pay Members					
Retirees	\$ 113,586,377	\$ 10,175,500	\$ 262,303,266	\$ 386,065,143	
Disabled Members	11,538,304	450,883	47,205,457	59,194,644	
Beneficiaries	<u>20,182,754</u>	<u>7,752,872</u>	<u>13,162,115</u>	<u>41,097,741</u>	
Total	\$ 145,307,435	\$ 18,379,255	\$ 322,670,838	\$ 486,357,528	
Grand Total	\$ 146,292,368	\$ 18,379,255	\$ 708,893,660	\$ 873,565,283	

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION V – CONTRIBUTIONS

In the process of evaluating the financial condition of any pension plan, the actuary analyzes the assets and liabilities to determine what level (if any) of contributions is needed to properly maintain the funding status of the System. Typically, the actuarial process will use a funding technique that will result in a pattern of contributions that are both stable and predictable.

For this System, the funding method employed as of the December 31, 2021 valuation is the **Entry Age Normal (EAN)** actuarial cost method. Under this funding method, a normal cost rate is determined as a level percentage of pay for each active member. The normal cost rate multiplied by payroll equals the total normal cost for each active member. The total anticipated member contributions for the year are then subtracted from the sum of the total normal cost to arrive at the employer normal cost. The normal cost contributions (employer and active member) will pay for projected benefits at retirement for each active member. The EAN Actuarial Liability is the difference between the System's total Present Value of Future Benefits and the present value of future normal costs. The difference between the EAN Actuarial Liability and the Actuarial Value of Assets is the Unfunded Actuarial Liability (UAL).

The UAL is amortized over an open (rolling) 20-year period as a level percentage of payroll. Due to the nature of a rolling amortization method, the process of fully amortizing the UAL is slow and heavily contingent on investment returns.

Table V-1 below presents and compares the employer contribution rates for the System for this valuation and the prior one.

Table V-1		
Employer Contribution Rate		
	Fiscal Year	Fiscal Year
	Ending 2023	Ending 2022
Total Normal Cost Rate	24.5%	23.4%
Member Contribution Rate	<u>-7.0%</u>	<u>-7.0%</u>
Employer Normal Cost Rate	17.5%	16.4%
UAL Amortization Rate	<u>4.4%</u>	<u>4.5%</u>
Employer Contribution Rate	21.9%	20.9%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION V – CONTRIBUTIONS

The UAL is amortized over an open (rolling) 20-year period as a level percentage of payroll. Table V-2 shows the calculation of the UAL amortization rates for this valuation and the prior one.

Table V-2 UAL Contribution Rate				
Valuation Date:	December 31, 2021		December 31, 2020	
Contribution Rate For Fiscal Year Ending:	2023		2022	
Actuarial Liability (AL)	\$	873,565,283	\$	813,745,891
Actuarial Value of Assets (AVA)		<u>824,660,202</u>		<u>766,121,894</u>
Unfunded Actuarial Liability (UAL)	\$	48,905,081	\$	47,623,997
UAL Amortization Payment at Mid-Year		3,547,809		3,525,657
Total Projected Payroll		81,257,427		78,459,642
UAL Amortization Rate		4.4%		4.5%

Table V-3 shows the calculation of the total normal cost rates for this valuation and the prior one.

Table V-3 Normal Cost Rate				
Valuation Date:	December 31, 2021		December 31, 2020	
Contribution Rate For Fiscal Year Ending:	2023		2022	
	Amount	% of Pay	Amount	% of Pay
Normal Cost				
Retirement Benefits	\$ 12,246,582	16.4%	\$ 11,192,589	15.6%
Disability Benefits	3,964,417	5.3%	3,677,990	5.1%
Pre-Retirement Death Benefits	413,350	0.6%	390,504	0.6%
Termination Benefits	<u>1,631,591</u>	<u>2.2%</u>	<u>1,525,528</u>	<u>2.1%</u>
Total Normal Cost ¹	18,255,940	24.5%	16,786,611	23.4%
Expected Payroll for Current Actives ¹	74,426,928		71,720,585	

¹ As of the beginning of the year

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

GFOA Recommended Information

The Government Finance Officers Association (GFOA) maintains a checklist of items to be included in a public retirement system's Annual Comprehensive Financial Report in order to receive recognition for excellence in financial reporting. The GFOA checklist uses the term Actuarial Accrued Liability, which is the same as the Actuarial Liability used elsewhere in this report.

- Table VI-1: Analysis of Financial Experience
- Table VI-2: Schedule of Funded Liabilities by Type (Solvency Test)
- Table VI-3: Schedule of Funding Progress
- Table VI-4: Schedule Retirees and Beneficiaries Added to and Removed from Rolls

Table VI-1 Analysis of Financial Experience Change in Unfunded Actuarial Accrued Liability¹							
Valuation Date	Actuarial Value Of Assets Investment	Actuarial Accrued Liability	Assumption & Method Changes	Plan Changes	Contributions²	Change in Unfunded Actuarial Accrued Liability	
December 31,	(Gain)/Loss	(Gain)/Loss					
2012	\$ 7,300,000	\$ (3,700,000)	\$ 0	\$ 0	\$ 600,000	\$	4,151,087
2013	(9,100,000)	100,000	0	0	(200,000)		(9,206,403)
2014	(3,400,000)	(12,000,000)	200,000	0	(300,000)		(15,442,099)
2015	9,088,530	(3,259,180)	0	0	(1,886,754)		3,942,596
2016	8,820,491	(2,638,130)	0	0	(33,480)		6,148,881
2017	(6,822,540)	(1,817,276)	0	0	(95,087)		(8,734,903)
2018	18,971,614	1,227,668	20,399,180	0	(1,883,424)		38,715,038
2019	(2,959,223)	(2,810,020)	0	0	902,650		(4,866,593)
2020	(13,209,119)	(4,416,865)	0	0	(999,293)		(18,625,277)
2021	(24,678,693)	6,157,486	23,661,770	0	(3,859,479)		1,281,084

¹ Prior to 2015, the details were reported rounded to the nearest \$100,000, so the components do not sum to the total change in the UAL.

² Change due to contributions (greater)/less than normal cost plus interest on the Unfunded Actuarial Accrued Liability.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

**Table VI-2
Schedule of Funded Liabilities by Type (Solvency Test)**

Valuation Date December 31,	Active Member Contributions (1)	Inactive Members, Retirees, and Beneficiaries (2)	Active Member Employer Financed Contributions (3)	Reported Actuarial Value of Assets	Portion of Actuarial Liabilities Covered by Reported Assets		
					(1)	(2)	(3)
2012	\$ 70,527,705	\$ 305,985,839	\$ 212,559,831	\$ 533,380,618	100.0%	100.0%	73.8%
2013	74,238,693	325,096,785	218,412,805	571,261,929	100.0%	100.0%	78.7%
2014	74,684,418	348,915,979	208,304,004	600,860,146	100.0%	100.0%	85.1%
2015	77,222,492	364,943,124	212,970,051	620,148,816	100.0%	100.0%	83.6%
2016	81,765,281	377,864,418	222,014,789	640,508,756	100.0%	100.0%	81.5%
2017	85,753,036	393,307,456	230,956,665	677,616,328	100.0%	100.0%	86.0%
2018	88,116,395	425,093,252	248,875,679	690,969,459	100.0%	100.0%	71.4%
2019	91,219,009	446,538,086	250,689,554	722,197,375	100.0%	100.0%	73.6%
2020	93,912,548	466,754,126	253,079,217	766,121,894	100.0%	100.0%	81.2%
2021	96,912,524	499,190,198	277,462,561	824,660,202	100.0%	100.0%	82.4%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

<p style="text-align: center;">Table VI-3 Schedule of Funding Progress</p>						
Valuation Date December 31,	Actuarial Value of Assets (a)	Actuarial Liability (b)	Unfunded Actuarial Liability (b) - (a)	Ratio Ratio (a) / (b)	Covered Payroll (c)	UAL as a Percentage of Covered Payroll [(b) - (a)] / (c)
2012	\$ 533,380,618	\$ 589,073,375	\$ 55,692,757	90.5%	\$ 64,150,064	86.8%
2013	571,261,929	617,748,283	46,486,354	92.5%	65,305,763	71.2%
2014	600,860,146	631,904,401	31,044,255	95.1%	64,572,237	48.1%
2015	620,148,816	655,135,667	34,986,851	94.7%	65,560,465	53.4%
2016	640,508,756	681,644,488	41,135,732	94.0%	66,946,250	61.4%
2017	677,616,328	710,017,157	32,400,829	95.4%	69,634,297	46.5%
2018	690,969,459	762,085,326	71,115,867	90.7%	72,017,196	98.7%
2019	722,197,375	788,446,649	66,249,274	91.6%	73,891,085	89.7%
2020	766,121,894	813,745,891	47,623,997	94.1%	75,880,105	62.8%
2021	824,660,202	873,565,283	48,905,081	94.4%	79,158,885	61.8%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

**Table VI-4
Schedule Retirees and Beneficiaries Added to and Removed From Rolls**

Valuation Date December 31,	Added to Rolls		Removed from Rolls		Rolls at End of Year		Average Annual Allowance	% Increase in Average Annual Allowance
	Number	Annual Allowance	Number	Annual Allowance	Number	Annual Allowance		
2012	33	\$ 1,201,800	23	\$ 435,120	921	\$ 25,226,219	\$ 27,390	3.8%
2013	48	1,938,485	17	380,985	952	27,143,376	28,512	4.1%
2014	63	2,400,693	42	850,741	971	29,165,652	30,037	5.3%
2015	44	1,652,860	26	494,625	989	30,774,324	31,117	3.6%
2016	31	1,286,489	33	629,314	987	31,914,576	32,335	3.9%
2017	41	1,757,606	28	694,600	1,000	33,526,716	33,527	3.7%
2018	43	1,888,265	28	544,427	1,015	35,386,980	34,864	4.0%
2019	56	2,090,904	27	604,235	1,044	37,445,846	35,868	2.9%
2020	57	2,473,237	41	1,024,790	1,060	39,429,415	37,198	3.7%
2021	58	2,415,326	43	1,126,089	1,075	41,220,576	38,345	3.1%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-1 Total Table of Plan Coverage			
	December 31, 2021	December 31, 2020	% change
Active Members			
Number	1,120	1,116	0.4%
Average Age	40.5	40.7	-0.4%
Average Service	13.8	13.8	0.3%
Total Payroll	\$77,470,947	\$74,803,405	3.6%
Average Payroll	69,170	67,028	3.2%
Inactive Vested Members	37	37	0.0%
Inactive Non-Vested Members	17	23	-26.1%
Pensioners:			
Number in Pay Status			
Retirees	767	760	0.9%
Disabled Retirees	<u>106</u>	<u>109</u>	-2.8%
Total	873	869	0.5%
Average Age	67.5	67.5	0.0%
Average Monthly Benefit	\$3,493	\$3,382	3.3%
Beneficiaries:			
Number in Pay Status ¹	202	191	5.8%
Average Age	71.1	70.1	1.5%
Average Monthly Benefit	\$1,910	\$1,818	5.1%

¹ Includes 18 QDROs in 2020 and 19 QDROs in 2021

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-1a Police Table of Plan Coverage			
	December 31, 2021	December 31, 2020	% change
Active Members			
Number	640	629	1.7%
Average Age	40.6	40.9	-0.9%
Average Service	13.8	14.0	-1.1%
Total Payroll	\$46,623,322	\$44,464,502	4.9%
Average Payroll	72,849	70,691	3.1%
Inactive Vested Members	27	28	-3.6%
Inactive Non-Vested Members	14	21	-33.3%
Pensioners:			
Number in Pay Status			
Retirees	403	396	1.8%
Disabled Retirees	<u>58</u>	<u>57</u>	1.8%
Total	461	453	1.8%
Average Age	66.0	66.1	-0.1%
Average Monthly Benefit	\$3,633	\$3,504	3.7%
Beneficiaries:			
Number in Pay Status ¹	100	100	0.0%
Average Age	71.1	69.6	2.3%
Average Monthly Benefit	\$1,844	\$1,758	4.9%

¹ Includes 9 QDROs in 2020 and 2021

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-1b Fire			
Table of Plan Coverage			
	December 31, 2021	December 31, 2020	% change
Active Members			
Number	480	487	-1.4%
Average Age	40.4	40.4	0.0%
Average Service	13.9	13.6	2.1%
Total Payroll	\$30,847,625	\$30,338,904	1.7%
Average Payroll	64,266	62,298	3.2%
Inactive Vested Members	10	9	11.1%
Inactive Non-Vested Members	3	2	50.0%
Pensioners:			
Number in Pay Status			
Retirees	364	364	0.0%
Disabled Retirees	<u>48</u>	<u>52</u>	-7.7%
Total	412	416	-1.0%
Average Age	69.1	69.0	0.2%
Average Monthly Benefit	\$3,336	\$3,249	2.7%
Beneficiaries:			
Number in Pay Status ¹	102	91	12.1%
Average Age	71.2	70.7	0.7%
Average Monthly Benefit	\$1,974	\$1,884	4.8%

¹ Includes 9 QDROs in 2020 and 10 QDROs in 2021

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

**Table A-2
Member Status Reconciliation**

Status:	Active			Inactive Vested		Inactive Non-Vested		Disabled					Retired					Beneficiary					Total			
	Police		Fire	Police	Fire	Police	Fire	Police		Fire			Police		Fire			Police		Fire						
	C	A	C	C	C	C	C	A	B	C	A	B	C	A	B	C	A	B	C	A	B	C				
December 31, 2020	629	1	486	28	9	21	2	8	2	47	25	2	25	171	28	197	144	51	169	41	32	27	37	32	22	2,236
New hires	58	0	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	76
Re-hires	0	0	1	0	0	0	(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Terminated Vested	(2)	0	(2)	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Terminated Non-Vested	(12)	0	(3)	0	0	12	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Refunded	(14)	0	(6)	0	0	(18)	(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(39)
Retired	(17)	0	(14)	(3)	(1)	(1)	0	0	0	0	0	0	0	0	0	21	0	0	15	0	0	0	0	0	0	0
Disabled	(1)	0	(1)	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Deceased (with beneficiary)	(1)	0	0	0	0	0	0	0	0	0	(3)	0	(1)	(4)	(1)	0	(3)	(2)	(1)	4	1	2	6	3	4	4
Deceased (without beneficiary)	0	0	0	0	0	0	0	0	0	0	(1)	0	0	(3)	(6)	0	(6)	(3)	0	(1)	(1)	0	(1)	(1)	0	(23)
Transfer	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Benefits expired	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(2)	0	0	0	(2)
Status correction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(1)	(2)	0	0	0	(3)
Net Change	11	0	(7)	(1)	1	(7)	1	0	0	1	(4)	0	0	(7)	(7)	21	(9)	(5)	14	3	(1)	(2)	5	2	4	13
December 31, 2021	640	1	479	27	10	14	3	8	2	48	21	2	25	164	21	218	135	46	183	44	31	25	42	34	26	2,249

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-3										
Average Monthly Benefits for New Retirees ¹										
	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
Average Monthly Pension										
0 - 5 Years of Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,710	\$ -	\$ -
5 - 10 Years of Service	-	3,460	3,379	-	-	-	-	-	3,371	-
10 - 15 Years of Service	1,481	2,296	-	-	2,744	2,688	-	1,867	2,254	2,344
15 - 20 Years of Service	3,850	3,825	4,196	4,549	2,533	1,895	4,203	1,993	3,930	3,929
20 - 25 Years of Service	3,579	3,635	3,230	3,861	3,144	3,108	3,004	2,971	3,037	3,691
25 - 30 Years of Service	4,212	4,551	4,233	4,073	4,320	4,509	4,074	4,212	4,138	-
30+ Years of Service	4,678	4,739	4,866	4,359	6,304	4,658	4,589	4,870	4,790	-
Average for All Years of Service	\$ 3,942	\$ 4,173	\$ 3,913	\$ 4,116	\$ 3,972	\$ 4,235	\$ 3,979	\$ 3,984	\$ 3,697	\$ 3,281
Average Final Average Salary										
0 - 5 Years of Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,890	\$ -	\$ -
5 - 10 Years of Service	-	4,441	4,341	-	-	-	-	-	4,262	-
10 - 15 Years of Service	4,616	4,209	-	-	5,122	5,014	-	5,150	4,065	3,838
15 - 20 Years of Service	5,238	5,661	5,464	5,429	4,726	3,590	5,280	4,842	4,961	5,120
20 - 25 Years of Service	6,062	5,840	5,931	6,062	5,596	5,586	5,490	5,132	4,936	5,652
25 - 30 Years of Service	6,204	6,667	6,119	6,196	6,349	6,887	5,963	5,698	5,696	-
30+ Years of Service	6,238	6,360	6,488	5,711	7,929	5,917	5,824	6,192	6,387	-
Average for All Years of Service	\$ 6,085	\$ 6,068	\$ 6,026	\$ 5,983	\$ 6,082	\$ 6,055	\$ 5,756	\$ 5,671	\$ 5,337	\$ 4,959
Number of Members Retiring										
0 - 5 Years of Service	-	-	-	-	-	-	-	1	-	-
5 - 10 Years of Service	-	3	1	-	-	-	-	-	1	-
10 - 15 Years of Service	1	3	-	-	1	1	-	1	3	2
15 - 20 Years of Service	1	3	2	1	5	1	1	1	1	1
20 - 25 Years of Service	15	5	15	10	7	2	8	13	10	3
25 - 30 Years of Service	16	17	11	13	14	7	9	11	20	-
30+ Years of Service	5	9	7	11	4	10	11	17	2	-
Total for All Years of Service	38	40	36	35	31	21	29	44	37	6

¹ Includes new disabilities.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-4 Retired Members by Type and Benefit Amount (as of December 31, 2021)							
Amount of Monthly Benefit	Non- Service Disability	QDRO¹	Recalc. Service Disability	Service	Service Disability	Survivor	Total
\$ 0-500	0	2	0	5	0	0	7
500-1000	2	9	0	4	2	23	40
1000-1500	3	6	0	37	0	31	77
1500-2000	0	1	1	63	0	42	107
2000-2500	0	1	2	115	0	47	165
2500-3000	0	0	2	96	1	22	121
3000-3500	0	0	4	92	6	10	112
3500-4000	0	0	13	96	10	3	122
4000-4500	0	0	21	85	12	2	120
4500-5000	0	0	11	81	7	1	100
>5000	0	0	7	93	2	2	104
Total	5	19	61	767	40	183	1,075

¹ Qualified Domestic Relations Order

Table A-5 Schedule of Active Member Valuation Data							
Valuation Date	Number of Members				Annual Covered Payroll (in Thousands)	Average Annual Pay	% Increase In Average Annual Pay
	Plan A	Plan B	Plan C	Total			
12/31/2012	11	0	1,073	1,084	\$ 64,150	\$ 59,179	2.6%
12/31/2013	9	0	1,076	1,085	65,306	60,190	1.7%
12/31/2014	8	0	1,060	1,068	64,572	60,461	0.5%
12/31/2015	5	0	1,045	1,050	65,560	62,439	3.3%
12/31/2016	4	0	1,059	1,063	66,946	62,979	0.9%
12/31/2017	2	0	1,080	1,082	69,634	64,357	2.2%
12/31/2018	2	0	1,065	1,067	72,017	67,495	4.9%
12/31/2019	1	0	1,093	1,094	73,891	67,542	0.1%
12/31/2020	1	0	1,115	1,116	75,880	67,993	0.7%
12/31/2021	1	0	1,119	1,120	79,159	70,678	3.9%

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

A. Actuarial Assumptions

1. Investment Rate of Return

7.25% per year, compounded annually, net of investment and administrative expenses. This assumption is composed of a 2.75% long-term price inflation and a 4.50% real rate of return over price inflation.

2. Payroll Growth

3.25% per year

3. Salary Increase

Salary increase varies by service as follows:

Years of Service	Inflation	Productivity	Merit and Longevity	Total Increase
Under 15	2.75%	0.50%	2.50%	5.75%
15 - 17	2.75	0.50	1.00	4.25
18+	2.75	0.50	0.75	4.00

4. Mortality Rates

Healthy Retirees and Beneficiaries:

RP-2000 Healthy Annuitant Mortality Tables with generational projection using Scale AA

Disabled Retirees:

RP-2000 Disabled Mortality Tables with generational projection using Scale AA

Active Members:

RP-2000 Employee Mortality Tables with generational projection using Scale AA

All active member deaths are assumed to be service related.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

5. Termination Rates before Retirement

Termination rates vary by job classification and years of service as follows:

Years of Service	Police	Fire
0-5	5.50%	2.00%
6	4.50	2.00
7 - 8	3.00	2.00
9 - 13	3.00	1.50
14 - 16	2.00	1.50
17 - 22	2.00	0.00
23+	0.00	0.00

No termination is assumed after attainment of retirement eligibility. A percentage of vested members terminating employment are assumed to forfeit their deferred retirement benefit in lieu of a refund of their accumulated contributions with interest. The table below shows the percent of vested members assumed to forfeit their deferred annuity.

Years of Service	Percent Forfeiting
10 - 14	65%
15 - 19	10
20+	0

6. Retirement Rates and Deferred Retirement Option Plan (DROP) Elections

Retirement rates vary by age, years of service, job classification, and Plan as follows:

Plan C					
Less than 30 Years of Service			30 or More Years of Service		
Age	Police	Fire	Years of Service	Police	Fire
50 - 58	10%	10%	30	0%	0%
59	10	15	31	0	0
60+	100	100	32	25	15
			33	50	20
			34	75	50
			35+	100	100

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

Plans A & B		
Years of Service	Police	Fire
28 or less	5%	5%
29	5	5
30	10	5
31	10	5
32	30	25
33	50	25
34	50	25
35+	100	100

In addition, we assume members who retire under service retirement provisions elect a BackDROP of up to 60 months, if eligible.

Inactive vested members with less than 20 years of service are assumed to retire at age 55. Inactive vested members with 20 or more years of service are assumed to retire at age 50.

7. Disability Rates

Disability rates vary by age and job classification. Sample rates are shown below.

Age	Police	Fire
20	0.09%	0.07%
25	0.15	0.12
30	0.30	0.24
35	0.49	0.39
40	0.69	0.54
45	0.88	0.70
50	1.08	0.85
55	1.28	0.91

75% of active member disablements are assumed to be service related.

Rate of recovery from disability is assumed to be zero.

8. BackDROP Election

100% of eligible members are assumed to elect the BackDROP option upon retirement, and for the maximum DROP period possible.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

9. Unknown Data for Members

Same as those exhibited by members with similar known characteristics.

10. Rehires

No explicit assumption or load.

11. Sick Leave Load

The calculated normal retirement benefits are increased by 2.50% to account for the inclusion of unused sick leave in the calculation of service.

12. Percent Married

80% of non-retired members are assumed to be married for purposes of death benefits.

13. Age of Spouse

Females (or males) are three years younger (or older) than their spouses.

14. Vested Deferred Pensions

Benefit amount is assumed to increase during the deferral period at 3.50% per year, compounded annually.

15. Increase in Section 415 and Section 401(a)(17) limits

2.75% per year.

16. Decrement Timing

Decrements are assumed to occur mid-year.

17. Disclosures regarding Models Used

Cheiron utilizes ProVal, an actuarial valuation software leased from Winklevoss Technologies (WinTech) for the intended purpose of calculating liabilities and projected benefit payments. We have relied on WinTech as the developer of ProVal. We have reviewed ProVal and have a basic understanding of it and have used ProVal in accordance with its original intended purpose. We are not aware of any material inconsistencies, unreasonable output resulting from the aggregation of assumptions, material limitations or known weaknesses that would affect this report.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

Projections in this report were developed using P-scan, our proprietary tool for the intended purpose of developing projections. The projections shown in this report cover multiple individual scenarios and the variables are not necessarily correlated. We are not aware of any material inconsistencies, unreasonable output resulting from aggregation of assumptions, material limitations or known weaknesses that would affect the projections shown in this report.

18. Rationale for actuarial assumptions

The demographic actuarial assumptions were adopted by the Board of Trustees based upon recommendations made in an actuarial experience study covering the period January 1, 2014 through December 31, 2016, prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the assumptions. While we consider these assumptions to be reasonable, we have not performed our own demographic actuarial experience study.

19. Changes in actuarial assumptions since last valuation

The investment rate assumption was changed from 7.50% to 7.25%.

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

B. Projection Assumptions

1. New Entrants

Active population is assumed to remain level.

2. Administrative Expenses

Assumed to be paid through future investment returns

C. Actuarial Methods

1. Actuarial Value of Assets

The expected Actuarial Value of Assets plus 25% of the difference between the expected Actuarial Value of Assets and the actual Market Value of Assets. The expected Actuarial Value of Assets is calculated based on the prior year's Actuarial Value of Assets, plus net cash flows, plus the expected investment return. If the resulting Actuarial Value of Assets is less than 80% or more than 120% of the market value, an adjustment is made to the actuarial value to bring the value within this corridor.

2. Actuarial Cost Method

The cost method for valuation of liabilities used for this valuation is the Entry Age Normal (EAN) method. Under this funding method, a normal cost rate is determined as a level percentage of pay for each active member. The normal cost rate multiplied by payroll equals the total normal cost for each active member. The total anticipated member contributions for the year are then subtracted from the sum of the total normal cost to arrive at the employer normal cost. The EAN Actuarial Liability is the difference between the System's total Present Value of Future Benefits and the present value of future normal costs. The Unfunded Actuarial Liability is the difference between the Actuarial Liability and the Actuarial Value of Assets.

3. Amortization Method

The Unfunded Actuarial Liability is amortized over an open (rolling) 20-year period as a level percentage of payroll. If the Unfunded Actuarial Liability is negative, the Unfunded Actuarial Liability is not amortized and the actuarially determined employer contribution rate is equal to the employer normal cost rate.

4. Changes in Actuarial Methods since last valuation

None.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

1. Plan Year

January 1 through December 31.

2. Plans

Plan A is applicable to members who entered the System between January 1, 1965 and December 31, 1978, and members who entered prior to January 1, 1965 and elected Plan A coverage.

Plan B is applicable to members who entered the System prior to January 1, 1965 and elected Plan B coverage.

Plan C is applicable to members entering the System after December 31, 1978.

3. Final Average Salary

Average salary for the three consecutive years of service out of the last ten years of service which produce the highest average.

4. Service Retirement

Eligibility: For Plan A and B members, 20 years of service

For Plan C members, the earlier of:

- Age 55 with 10 years of service
- Age 50 with 20 years of service
- 30 years of service

Amount: 2.50% of Final Average Salary times years of service.

Maximum amount is 75% of Final Average Salary.

5. Deferred Retirement

Eligibility: Ten years of service. 20 years of service required for survivor benefits. Member may also elect a refund of accumulated contributions with interest in lieu of a deferred retirement benefit.

Amount: The Accrued Benefit at termination is based on the service retirement formula. The Accrued Benefit is adjusted during the deferral period based on changes in the National Average Earnings, up to 5.5% annual adjustments. Payments commence at age 55, or age 50 for Plan C members with 20 or more years of service.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

6. Service-Connected Disability

Eligibility: No age or service requirement. Requires permanent inability to perform the duties of position.

Amount: 75% of final rate of salary if accident, 50% if disease.

Pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability. Pension recomputed at age 55 using service retirement formula, updated final average salary and service credit for period of disability.

7. Non-Service Disability

Eligibility: Seven years of service and under age 55. Requires permanent inability to perform duties of current position.

Amount: 30% of Final Average Salary plus 1% of Final Average Salary times years of service in excess of seven years. Maximum benefit is 50% of Final Average Salary.

Pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability.

8. BackDROP (Deferred Retirement Option Plan)

Eligibility: Member must be eligible to retire under service retirement provisions at the effective date of the BackDROP.

Amount: Under the BackDROP, the member may elect a benefit based on a retirement date up to 60 months prior to the current date. The monthly benefit is computed based on years of service and Final Average Salary as of the selected prior date. The DROP account payable to the retiring member is the computed benefit multiplied by the number of months of BackDROP plus applicable Post-Retirement Adjustments and 5% annual interest, compounded monthly from the selected prior date. The monthly benefit paid to the member includes Post-Retirement Adjustments as if the member had retired on the selected prior date.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

9. Spouse Pre-Retirement Service-Connected Death Benefits

Eligibility:	Death resulting directly from service-connected causes.
Amount:	For surviving spouses, 50% of final salary plus 10% of final salary for each child under age 18 to a maximum of 75% of final salary. For minor children without a surviving spouse, 20% of final salary for each child under age 18 to a maximum of 60% of final salary.

10. Spouse Pre-Retirement Non-Service-Connected Death Benefits

Eligibility:	For Plan A and C members, three years of service For Plan B members, 20 years of service
Amount:	For Plan A and C members: For surviving spouses, 35% of Final Average Salary plus 1% of Final Average Salary for each year of service in excess of three to a maximum of 50% of Final Average Salary. Benefit terminates upon remarriage prior to age 40 for pensions effective prior to January 1, 2000. For minor children with a surviving spouse, 10% of Final Average Salary for each child under age 18. Maximum benefit, including surviving spouse benefit, is 66 2/3% of Final Average Salary. For minor children without a surviving spouse, 15% of Final Average Salary for each child under age 18 to a maximum of 50% of Final Average Salary. For Plan B members: For surviving spouses, 50% of final salary. For minor children without a surviving spouse, children share equally a benefit of 50% of final salary.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

11. Post-Retirement Death Benefits

Eligibility: 20 years of service. For retirements prior to January 1, 2000, surviving spouse must have been married to retired employee at retirement. For retirements on or after January 1, 2000, surviving spouse must have been married to retired employee for at least one year at time of death.

Minor children must be under the age of 18.

Amount: For Plan A and C members:

For surviving spouses, 35% of Final Average Salary plus 1% of Final Average Salary for each year of service in excess of three to a maximum of 50% of Final Average Salary. Benefit terminates upon remarriage prior to age 40 for those retiring prior to January 1, 2000.

For minor children with a surviving spouse, 10% of the member's Final Average Salary for each child under age 18. Maximum benefit, including surviving spouse benefit, is 66 2/3% of Final Average Salary.

For minor children without a surviving spouse, 15% of member's Final Average Salary for each child under age 18. Maximum benefit is 50% of Final Average Salary.

For Plan B members:

For surviving spouses, 50% of final salary.

For minor children without a surviving spouse, children share equally a benefit of 50% of final salary.

12. Post-Retirement Funeral Benefits

Eligibility: For Plan A and C members, must have retired after November 21, 1973.

All Plan B members are eligible.

Amount: For Plan A and C members, \$750

For Plan B members who retired after November 21, 1973, \$750

For Plan B members who retired on or before November 21, 1973, \$100.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

13. Non-Vested Termination Benefits

Eligibility:	Termination of employment without eligibility for any other benefit.
Amount:	Refund of member's contributions with interest at 5% per year compounded monthly.

14. Post-Retirement Adjustments (PRA)

Eligibility:	Completion of 36 months of retirement.
Amount:	2% of the original base benefit (simple COLA).

15. Member Contributions

Plan A:	8% of salary.
Plan B:	6% of salary.
Plan C:	7% of salary.

16. City Contributions

Actuarially determined amounts sufficient to satisfy K.S.A 1977 Suppl. 12-5002.

17. Unused Sick Leave

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

18. Section 415 limit

\$230,000, effective January 1, 2021.

19. Section 401(a)(17) limit

\$290,000, effective January 1, 2021.

20. Changes Since Last Valuation

None.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX D – GLOSSARY OF TERMS

1. Actuarial Assumptions

Assumptions as to the occurrence of future events affecting pension costs, such as: mortality, withdrawal, disability, and retirement; changes in compensation; inflation; rates of investment earnings, and asset appreciation or depreciation; and other relevant items.

2. Actuarial Cost Method

A procedure for determining the Actuarial Present Value of pension plan benefits and expenses and for developing an allocation of such value to each year of service, usually in the form of a normal cost and an Actuarial Liability.

3. Actuarial Gain/(Loss)

A measure of the difference between actual experience and that expected based upon a set of actuarial assumptions during the period between two actuarial valuation dates, as determined in accordance with a particular actuarial cost method.

4. Actuarial Liability

The portion of the Actuarial Present Value of projected benefits which will not be paid by future normal costs. It represents the value of the past normal costs with interest to the valuation date.

5. Actuarial Present Value (Present Value)

The value as of a given date of a future amount or series of payments. The Actuarial Present Value discounts the payments to the given date at the assumed investment return and includes the probability of the payment being made. As a simple example: assume you owe \$100 to a friend one year from now. Also, assume there is a 1% probability of your friend dying over the next year, in which case you will not be obligated to pay him. If the assumed investment return is 10%, the Actuarial Present Value is:

$$\begin{array}{ccccccc} \text{Amount} & & \text{Probability of} & & \text{1/(1+Investment Return)} & & \\ & & \text{Payment} & & & & \\ \$100 & \times & (1 - .01) & \times & 1/(1+.1) & = & \$90 \end{array}$$

6. Actuarial Valuation

The determination, as of a specified date, of the normal cost, Actuarial Liability, Actuarial Value of Assets, and related Actuarial Present Values for a pension plan.

APPENDIX D – GLOSSARY OF TERMS

7. Actuarial Value of Assets

The value of cash, investments and other property belonging to a pension plan as used by the actuary for the purpose of an actuarial valuation. The purpose of an Actuarial Value of Assets is to smooth out fluctuations in market values. This way long-term costs are not distorted by short-term fluctuations in the market.

8. Actuarially Equivalent

Of equal Actuarial Present Value, determined as of a given date with each value based on the same set of actuarial assumptions.

9. Amortization Payment

The portion of the pension plan contribution which is designed to pay interest and principal on the Unfunded Actuarial Liability in order to pay for that liability in a given number of years.

10. Entry Age Normal Actuarial Cost Method

A method under which the Actuarial Present Value of the projected benefits of each individual included in an actuarial valuation is allocated on a level basis over the earnings of the individual between entry age and assumed exit ages.

11. Funded Ratio

The ratio of the Actuarial Value of Assets to the Actuarial Liabilities.

12. Investment Return Assumption

The assumed interest rate used for projecting dollar related values in the future.

13. Mortality Table

A set of percentages which estimate the probability of death at a particular point in time. Typically, the rates are annual and based on age and sex.

14. Normal Cost

That portion of the Actuarial Present Value of pension plan benefits and expenses, which is allocated to a valuation year by the actuarial cost method.

**POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX D – GLOSSARY OF TERMS

15. Projected Benefits

Those pension plan benefit amounts which are expected to be paid in the future under a particular set of actuarial assumptions, taking into account such items as the effect of advancement in age and increases in future compensation and service credits.

16. Unfunded Actuarial Liability

The excess of the Actuarial Liability over the Actuarial Value of Assets.



Classic Values, Innovative Advice



Wichita Employees' Retirement System

**Actuarial Valuation
as of December 31, 2021**

Produced by Cheiron

March 2022

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Letter of Transmittal	i
Section I Board Summary.....	1
Section II Identification and Assessment of Risk	9
Section III Assets.....	19
Section IV Liabilities.....	24
Section V Contributions	29
Section VI Accounting Statement Information	31
 <u>Appendices</u>	
Appendix A Membership Information.....	35
Appendix B Actuarial Assumptions and Methods	39
Appendix C Summary of Plan Provisions	45
Appendix D Glossary of Terms	51

LETTER OF TRANSMITTAL

March 29, 2022

The Board of Trustees
Wichita Employees' Retirement System
City Hall, 12th Floor
455 N. Main Street
Wichita, KS 67202

Dear Members of the Board:

At your request, we have conducted an actuarial valuation of the Wichita Employees' Retirement System (WERS, System, or Plan) as of December 31, 2021. The valuation is organized as follows:

- In Section I **Board Summary**, we describe the purpose of an actuarial valuation and summarize the key results found in this valuation.
- The **Main Body** of the report presents details on the System's:
 - Section II - Identification and Assessment of Risk
 - Section III - Assets
 - Section IV - Liabilities
 - Section V - Contributions
 - Section VI - Accounting Statement Information
- In the **Appendices**, we conclude our report with detailed information describing the System's membership (Appendix A), actuarial assumptions and methods employed (Appendix B), a summary of pertinent plan provisions (Appendix C), and a glossary of terms (Appendix D).

The results of this report rely on future System experience conforming to the underlying assumptions. To the extent that actual System experience deviates from the underlying assumptions, the results will vary accordingly. The demographic actuarial assumptions were adopted by the Board, effective with the December 31, 2018 valuation, based on recommendations from the experience study performed for the period January 1, 2014 through December 31, 2016 prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the actuarial assumptions. While we consider these assumptions reasonable, we have not yet performed our own demographic actuarial experience study.

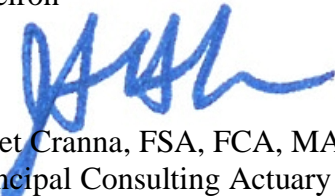
The purpose of this report is to present the annual actuarial valuation of the Wichita Employees' Retirement System. This report is for the use of Board and its auditors in preparing financial reports in accordance with applicable law and accounting requirements. The report does not include calculations related to GASB Statements No. 67 and 68, which are provided in a separate report.

In preparing our report, we relied on information (some oral and some written) supplied by the Wichita Retirement Systems staff. This information includes, but is not limited to, plan provisions, employee data, and financial information. We performed an informal examination of the obvious characteristics of the data for reasonableness and consistency in accordance with Actuarial Standards of Practice No. 23.


This report and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices and our understanding of the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board as well as applicable laws and regulations. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this report. This report does not address any contractual or legal issues. We are not attorneys, and our firm does not provide any legal services or advice.

This actuarial report was prepared exclusively for the Wichita Employees' Retirement System for the purpose described herein. Other users of this report are not intended users as defined in the Actuarial Standards of Practice, and Cheiron assumes no duty or liability to any other user.

Sincerely,
Cheiron



Janet Cranna, FSA, FCA, MAAA, EA
Principal Consulting Actuary



Jake Libauskas, FSA, FCA, MAAA, EA
Consulting Actuary

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

The primary purpose of the actuarial valuation and this report is to measure, describe and identify as of the valuation date:

- The financial condition of the System,
- Past and expected trends in the financial progress of the System,
- The employer contribution rate for fiscal year 2023, and
- Information required for accounting statements.

In the balance of this Board Summary, we present (A) the basis upon which this year's valuation was completed, (B) the key findings of this valuation including a summary of all key financial results, (C) an examination of the historical trends, and (D) the projected financial outlook for the System.

A. Valuation Basis

The December 31, 2021 valuation results are based on the same actuarial assumptions and methods used in the December 31, 2020 valuation, except for the investment return assumption. The investment return assumption was lowered from 7.50% to 7.25%. The demographic assumptions were based on recommendations from the experience study covering the period January 1, 2014 through December 31, 2016, prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the assumptions. While we consider these assumptions to be reasonable, we have not performed our own demographic actuarial experience study.

This report was prepared using census data and financial information as of December 31, 2021 provided by the Wichita Retirement Systems' staff and does not reflect any subsequent changes in the membership or assets.

Whereas there remains a lot of uncertainty, we continue to monitor developments regarding the COVID-19 pandemic and the impact it may have on the System. Actual experience, both demographic and economic, will be reflected in subsequent valuations as experience emerges.

B. Key Findings of this Valuation

The key results of the December 31, 2021 actuarial valuation are as follows:

- The actuarially determined employer contribution rate for the city as a percent of payroll increased from 12.9% as of December 31, 2020 to 13.0% as of December 31, 2021. Prior to the assumption change, the actuarially determined employer contribution rate was 10.8% of payroll as of December 31, 2021.
- The Unfunded Actuarial Liability decreased from \$49.3 million as of December 31, 2020 to \$45.6 million as of December 31, 2021.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

- The System's funded ratio, the ratio of actuarial asset value over liabilities, increased from 92.8% as of December 31, 2020 to 93.6% as of December 31, 2021.
- There was a net actuarial experience gain during the year of \$19.5 million.
 - During the year ended December 31, 2021, the System's assets had a 14.6% return on a market value basis, but due to smoothing of prior investment gains and losses, the return on the actuarial asset value was 10.7% (as compared to last year's 7.50% investment return assumption). This resulted in an actuarial gain on investments of \$19.6 million.
 - On the liability side, the System experienced a total loss of \$0.1 million. See Table IV-3 for more details.
- The investment return assumption was lowered from 7.50% to 7.25% which increased the Actuarial Liability by \$17.5 million.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

Following is Table I-1 which summarizes all the key results of the valuation with respect to the System's membership, assets and liabilities, and contributions. The results are presented and compared for both the current and prior plan year.

Table I-1 Wichita Employees' Retirement System Summary of Principal Results			
Valuation as of:	December 31, 2021	December 31, 2020	% change
Participant Counts			
Active Members			
Plan 2	708	709	(0.1%)
Plan 3	<u>635</u>	<u>638</u>	(0.5%)
Total	1,343	1,347	(0.3%)
DROP Members	71	81	(12.3%)
Retirees and Beneficiaries	1,494	1,459	2.4%
Inactive Vested Members	143	143	0.0%
Inactive Non-Vested Members	<u>94</u>	<u>126</u>	(25.4%)
Total Members	3,145	3,156	(0.3%)
Annual Projected Payroll, including DROP	\$80,187,603	\$79,334,562	1.1%
Annual Retirement Allowances for Retired Members and Beneficiaries ¹	46,807,902	45,353,773	3.2%
Assets and Liabilities			
Actuarial Liability (AL)	\$715,528,135	\$686,221,086	4.3%
Actuarial Value of Assets (AVA)	<u>669,951,808</u>	<u>636,876,961</u>	5.2%
Unfunded Actuarial Liability (UAL)	45,576,327	49,344,125	(7.6%)
Funded Ratio (AVA/AL)	93.6%	92.8%	
Market Value of Assets (MVA)	\$728,717,909	\$667,029,106	9.2%
Funded Ratio (MVA/AL)	101.8%	97.2%	
Contributions as a Percentage of Payroll	Fiscal Year 2023	Fiscal Year 2022	
Employer Normal Cost Rate	8.9%	8.3%	
UAL Amortization Rate	<u>4.1%</u>	<u>4.6%</u>	
Employer Contribution Rate	13.0%	12.9%	

¹ Includes retirement allowances for DROP members.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

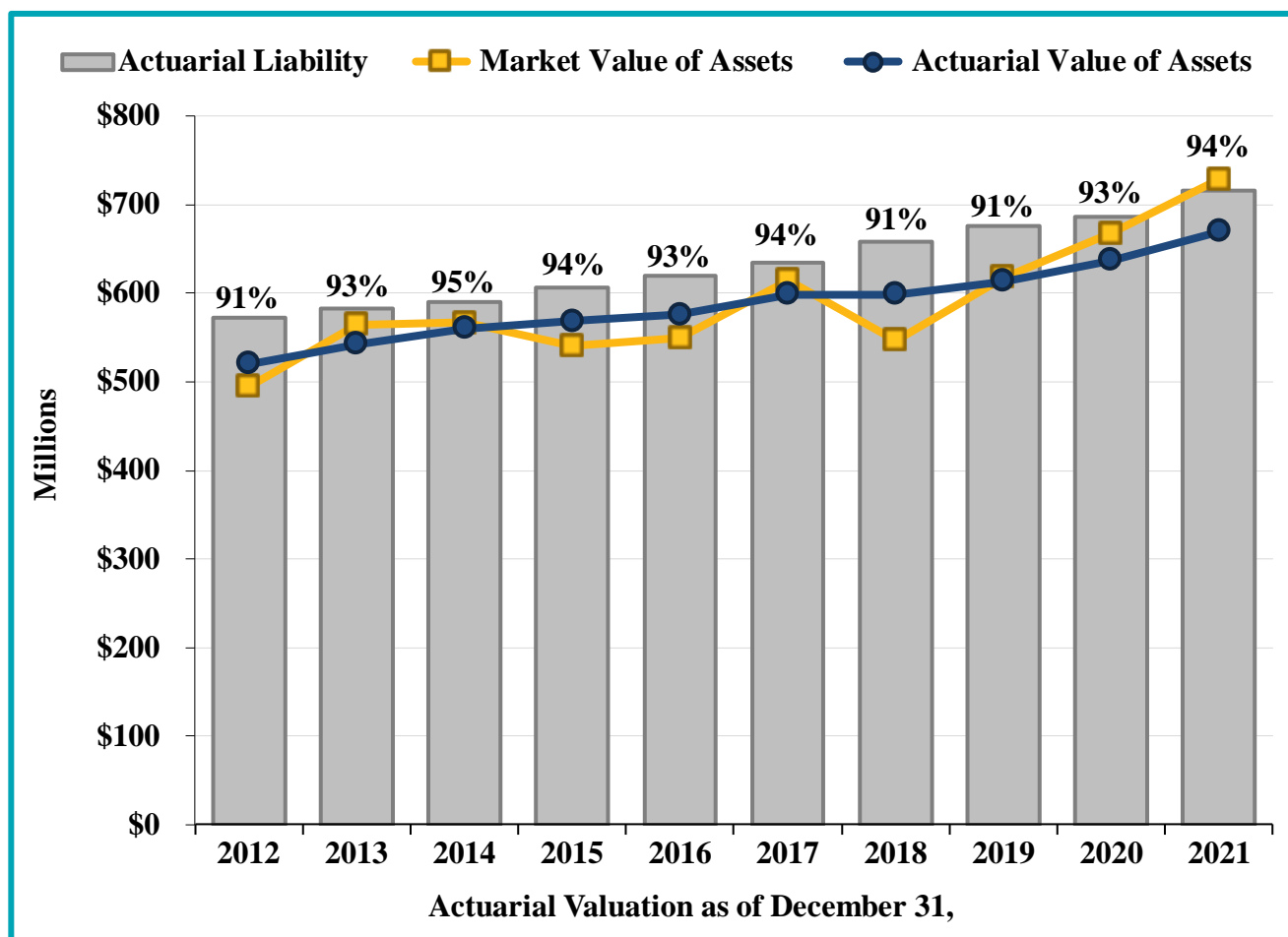
SECTION I – BOARD SUMMARY

C. Historical Trends

Despite the fact that for most retirement systems the greatest attention is given to the current valuation results and in particular the size of the current Unfunded Actuarial Liability and the employer's contribution, it is important to remember that each valuation is merely a snapshot in the long-term progress of a pension system. It is more important to judge a current year's valuation result relative to historical trends, as well as trends expected into the future.

Assets and Liabilities

The chart below shows the last ten years of the Actuarial Liabilities, shown as bars, and assets, shown as lines. The Market Value of Assets (MVA) is shown as the gold line and the smoothed Actuarial Value of Assets (AVA) is shown as the blue line. Above the bars is the funded ratio, which is the ratio of the Actuarial Value of Assets to the Actuarial Liability.



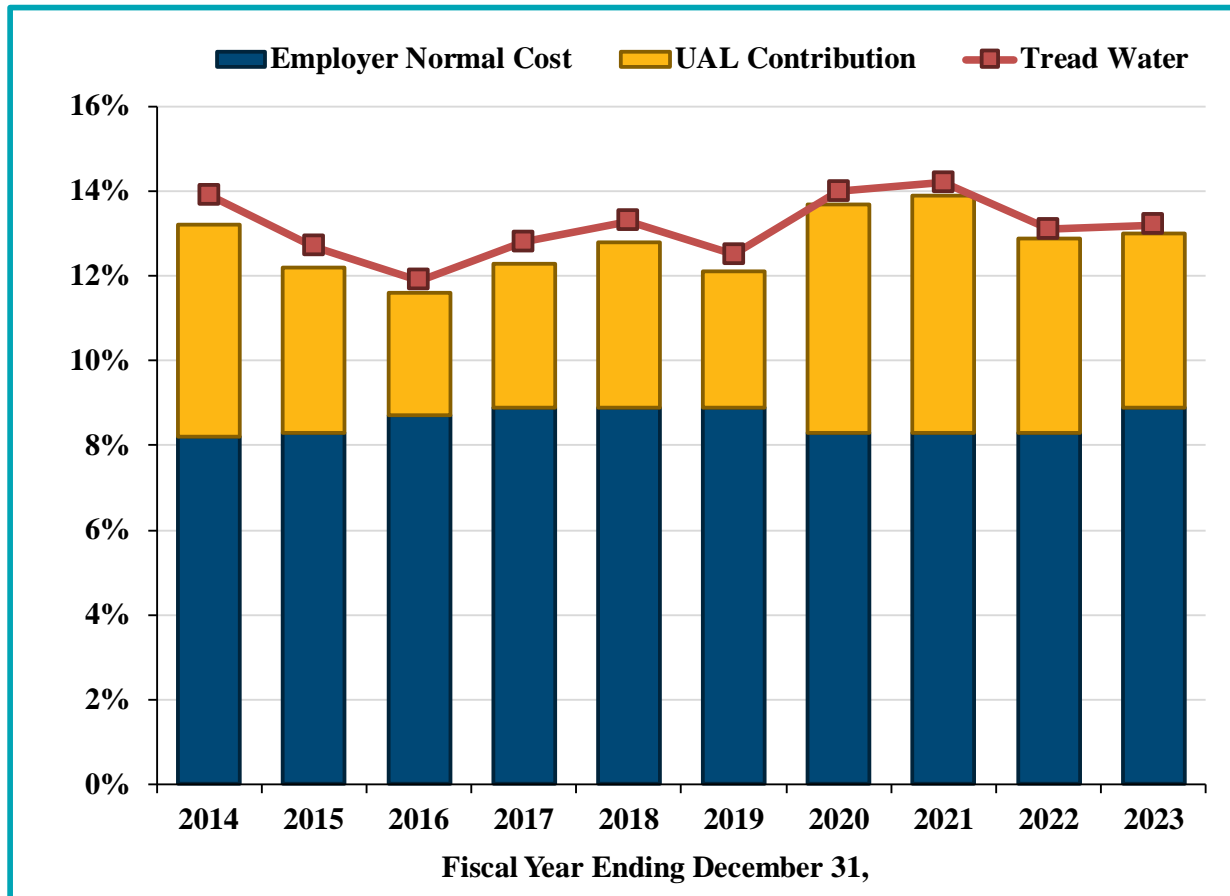
**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

As shown in the prior chart, there was an increase in the MVA from \$667 million to \$729 million, due to a 14.6% return during the year, which is greater than last year's investment return assumption of 7.50%. The effect of the asset smoothing method, which is shown as the AVA, has tracked a smoother path through the volatility of the market over recent years. The AVA return for 2021 was 10.7%. This chart also shows that the funded ratio has been stable during this period, fluctuating between 91% and 95% for the past ten years.

Contribution Rates

The bars in the chart below show the employer contribution rates for the last ten years. The blue bar is the employer normal cost rate and the gold bar is the Unfunded Actuarial Liability (UAL) contribution rate. The red line shows the tread water contribution rate, which is the employer normal cost-plus interest on the UAL as a percentage of projected payroll. The tread water line shows the minimum contribution rate needed to avoid an increase in the UAL. The employer contribution rates have been slightly less than the tread water contribution rates for the last ten years. The employer contribution rate increased from 12.9% of payroll for 2022 to 13.0% of payroll for 2023 primarily due to the reduction in the investment return assumption which was mostly offset by the actual investment return being greater than assumed during 2021.

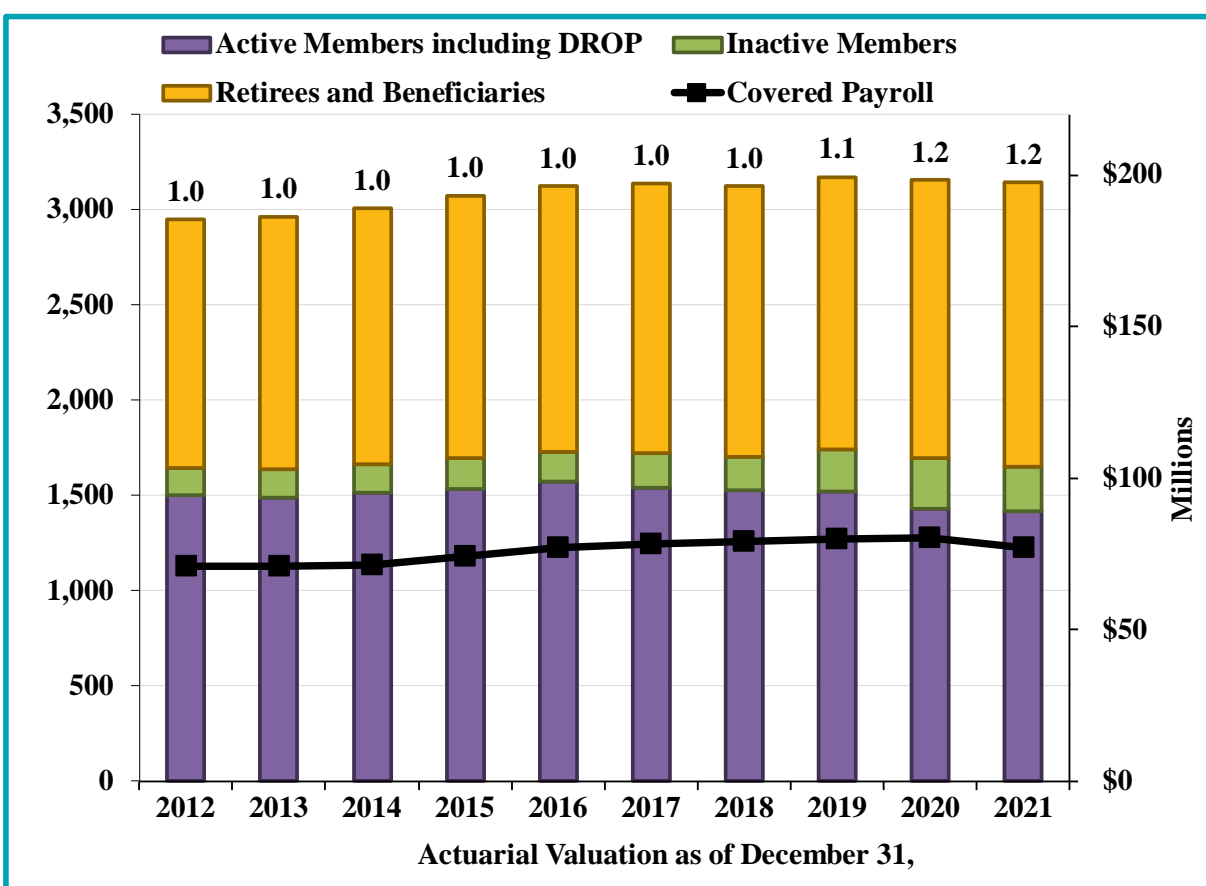


**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

Membership Trends

The chart below shows the membership counts of the System for the last ten valuations. The numbers which appear above each bar represent the ratio of the number of inactive members to active members at each valuation date and provides a measure of the maturity of the System. This ratio is referred to as the support ratio. The support ratio has been generally stable over the period. In 2012, each active supported 1.0 inactive members and in 2021 each active supports 1.2 inactive members. As the System matures and the support ratio increases, the System will likely experience more volatility in contribution rates when actuarial gains and losses are recognized.



**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION I – BOARD SUMMARY

D. Future Expected Financial Trends

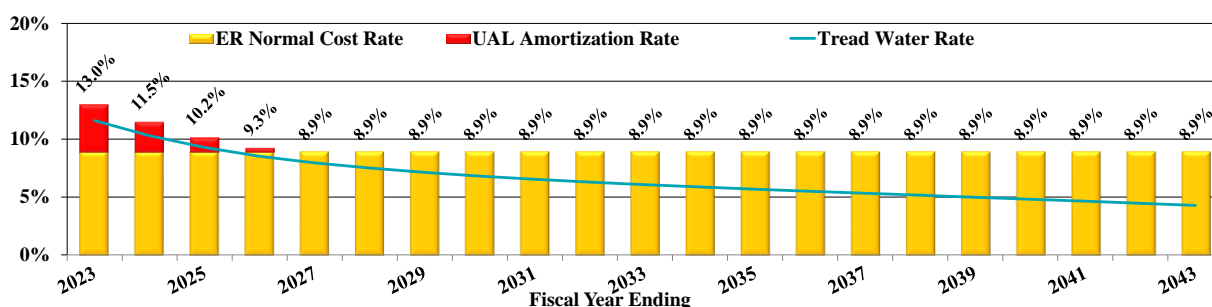
The analysis of projected financial trends is perhaps the most important component of this valuation. In this section, we present the implications of the December 31, 2021 valuation results in terms of (1) the projected employer contributions, and (2) projected System's funded status (ratio of assets over liabilities). We assume future investment returns of 7.25% each year. The projections assume there will be no future gains or losses on the liability and that covered payroll increases at 3.25% per year.

1. Contribution Rate Projections

The chart shows the projected employer normal cost rate (gold bars), UAL amortization rate (red bars), and tread water rate (blue line). The projected actuarially determined employer contribution rates (gold bars plus red bars) are shown above the bars for each year.

Baseline returns of 7.25%

The chart below shows that the employer contribution rate is projected to decrease over the 20-year period from 13.0% for 2023 to 8.9% for 2027 and thereafter. These projections assume that the System earns the assumed investment rate of return of 7.25% on market value each year. The employer contribution rates are projected to decrease over the next few years as deferred investment gains are recognized in the Actuarial Value of Assets. Once the System reaches 100% funded, the employer contribution rate is equal to the employer normal cost rate.



**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

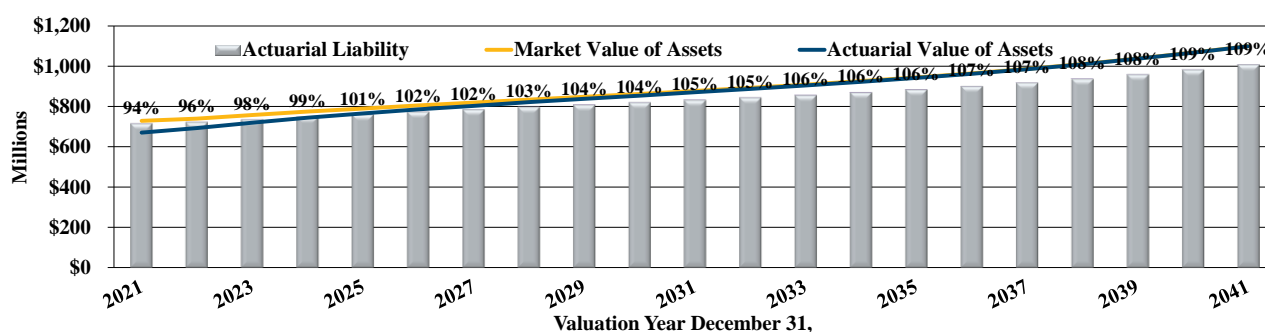
SECTION I – BOARD SUMMARY

2. Asset and Liability Projections

This next projection chart compares the Market Value of Assets (gold line) and the actuarial or smoothed value of assets (blue line) to the System's Actuarial Liabilities (gray bars). In addition, above the bars, we show the System's funded ratio (ratio of Actuarial Value of Assets to Actuarial Liabilities). The projections assume that the employer contribution rates, as shown in the previous charts, are made each year. The years shown in the chart signify the valuation date as of December 31st.

Baseline returns of 7.25%

Assuming that the System earns the assumed investment rate of 7.25%, the funded ratio will increase from 94% to 109% during the 20-year projection period. The UAL is projected to decrease as deferred investment gains are recognized in the Actuarial Value of Assets.



**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Actuarial valuations are based on a set of assumptions about future economic and demographic experience. These assumptions represent a reasonable estimate of future experience, but actual future experience will undoubtedly be different and may be significantly different. This section of the report is intended to identify the primary risks to the System, provide some background information about those risks, and provide an assessment of those risks. Some of the charts within this section compare measures calculated for the Wichita Employees' Retirement System to plans within the Public Plans Database. Information regarding this data can be found at <https://publicplansdata.org/>.

Identification of Risks

The fundamental risk to a pension plan is that the contributions needed to pay the benefits become unaffordable. While we believe it is unlikely that the System by itself would become unaffordable, the contributions needed to support the System may differ significantly from expectations. While there are a number of factors that could lead to contribution amounts deviating from expectations, we believe the primary sources are:

- Investment risk,
- Interest rate risk,
- Longevity and other demographic risks, and
- Assumption change risk.

Other risks that we have not identified may also turn out to be important.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

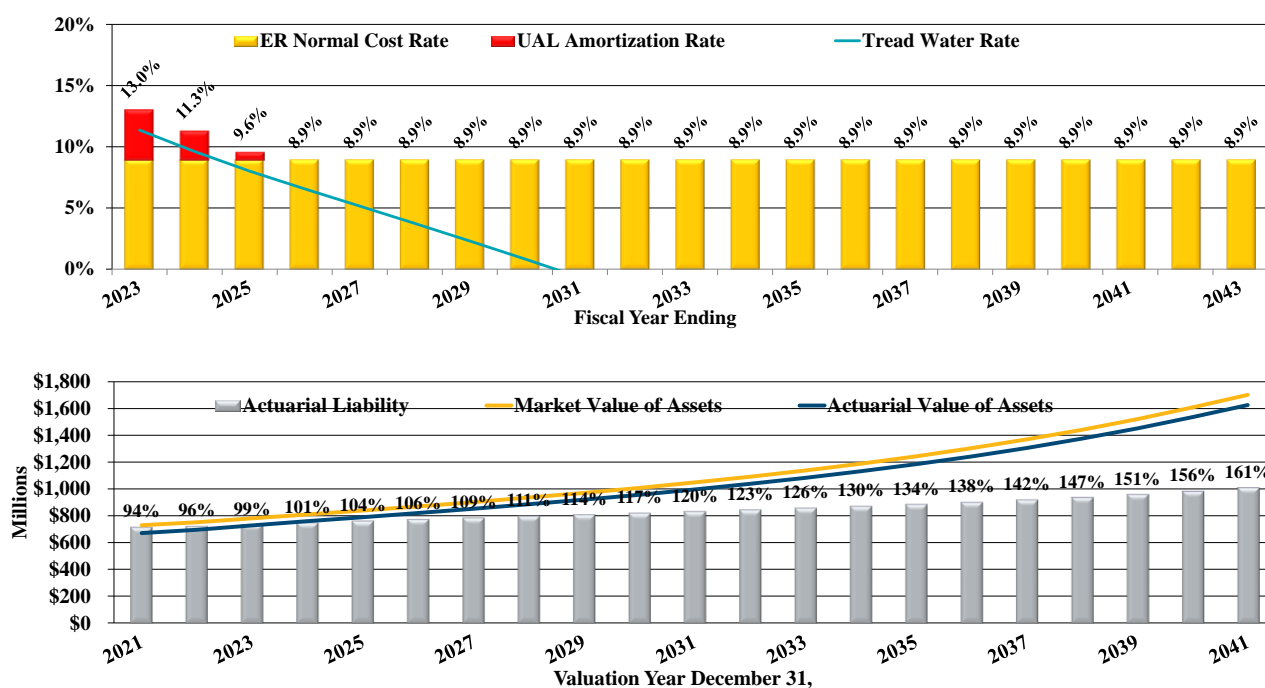
Investment risk is the potential for investment returns to be different than expected. Lower investment returns than anticipated will increase the UAL necessitating higher contributions in the future unless there are other gains that offset these investment losses. The potential volatility of future investment returns is determined by the System's asset allocation, and the affordability of the investment risk is determined by the amount of assets invested relative to the size of the Plan Sponsor or other contribution base.

For stress testing purposes, we include two scenarios to illustrate the impact actual investment returns may have on future funded status and contribution amounts compared to the baseline scenario presented at the end of Section I of this report. The two scenarios are (1) optimistic returns of 8.75% each year and (2) pessimistic returns of 5.75% each year.

As with the baseline, we present the implications of the December 31, 2021 valuation results in terms of the projected employer contributions, and projected System's funded status (ratio of assets over liabilities).

1. Optimistic returns of 8.75%

If the System earns 1.50% greater than the assumed rate in each year of the projection, the employer contribution rate will steadily decrease to the employer normal cost rate of 8.9% by 2026. The funded ratio is projected to increase to 101% by 2024 and 161% by the end of the 20-year projection period.

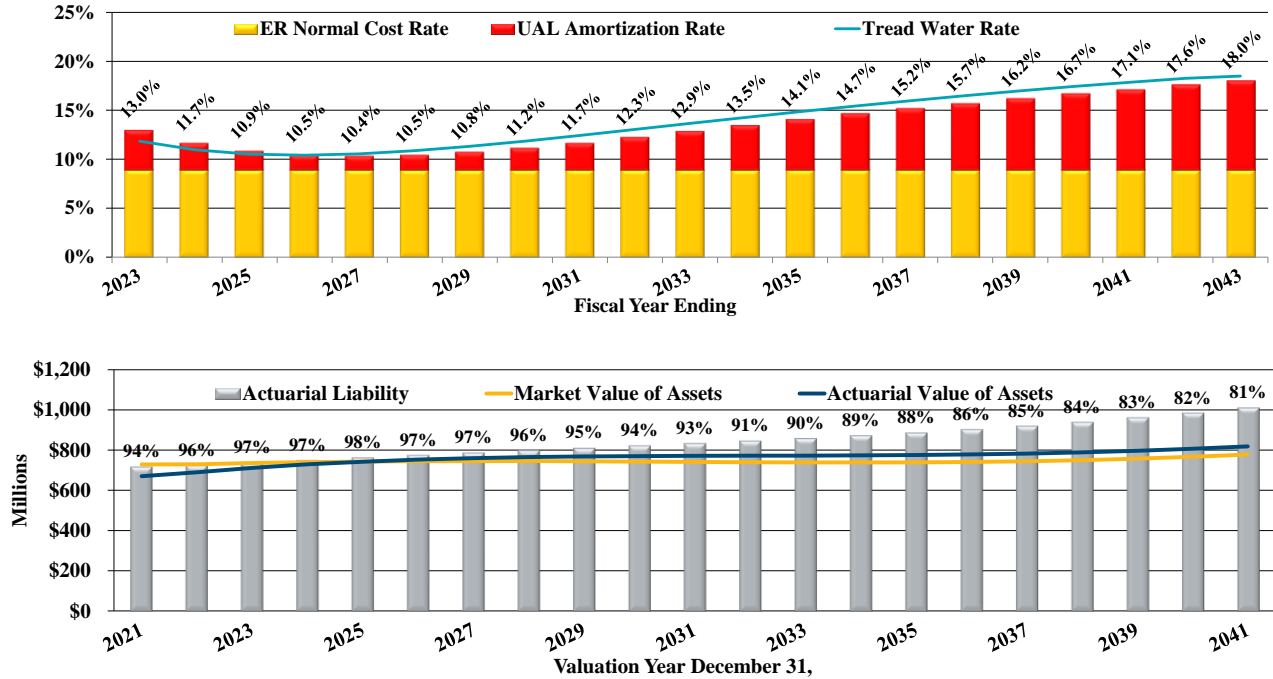


**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

2. Pessimistic returns of 5.75%

If the System earns 1.50% less than the assumed rate in each year of the projection, the employer contribution rate will decrease for a few years before steadily increasing to 18.0% by the end of the 20-year projection period. The funded ratio will increase for a few years before decreasing to 81% by the end of the 20-year projection period due to the investment losses and employer contribution rates being less than tread water rates.

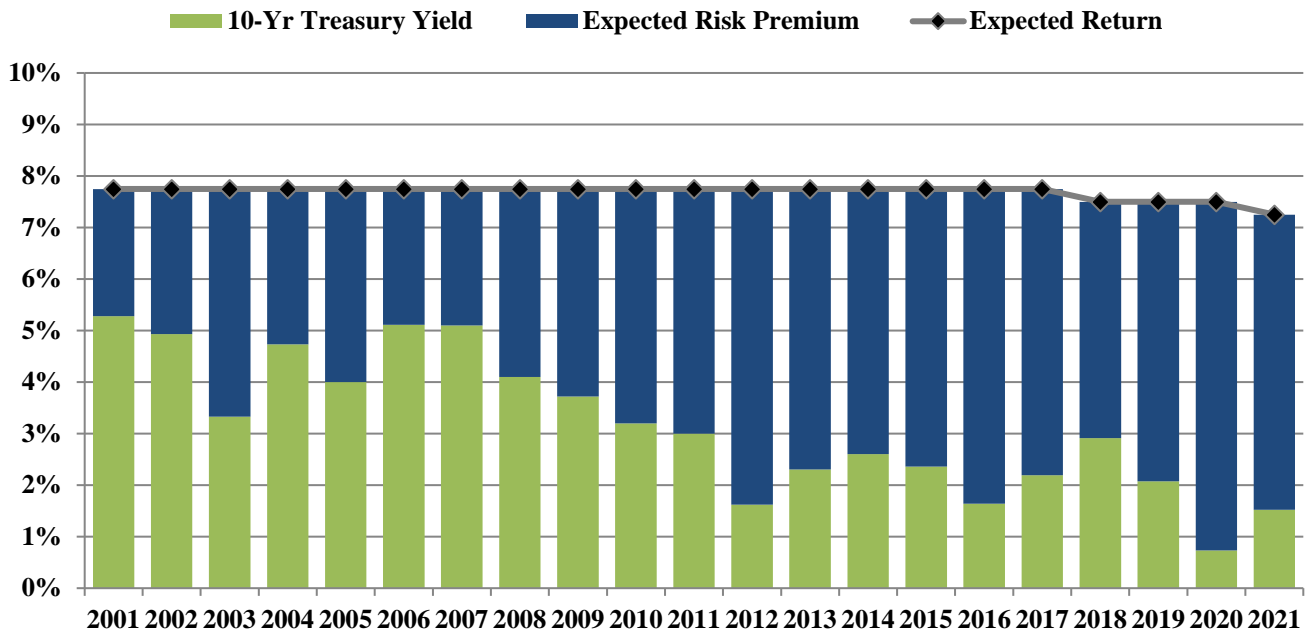


**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Interest rate risk is the potential for interest rates to be different than expected. For public plans, short-term fluctuations in interest rates have little or no effect as the plan's liability is usually measured based on the expected return on assets. Longer-term trends in interest rates, however, can have a powerful effect. The chart below shows the yield on a 10-year Treasury security compared to the System's assumed rate of return. The difference is a simple measure of the amount of investment risk taken. As interest rates have declined, plans faced a choice: maintain the same level of risk and reduce the expected rate of return, maintain the same expected rate of return and take on more investment risk, or some combination of the two strategies. As shown below, even though WERS has decreased the discount rate during the period, the amount of risk has increased as interest rates have dropped more than the discount rate.

Wichita ERS Expected Risk Premium



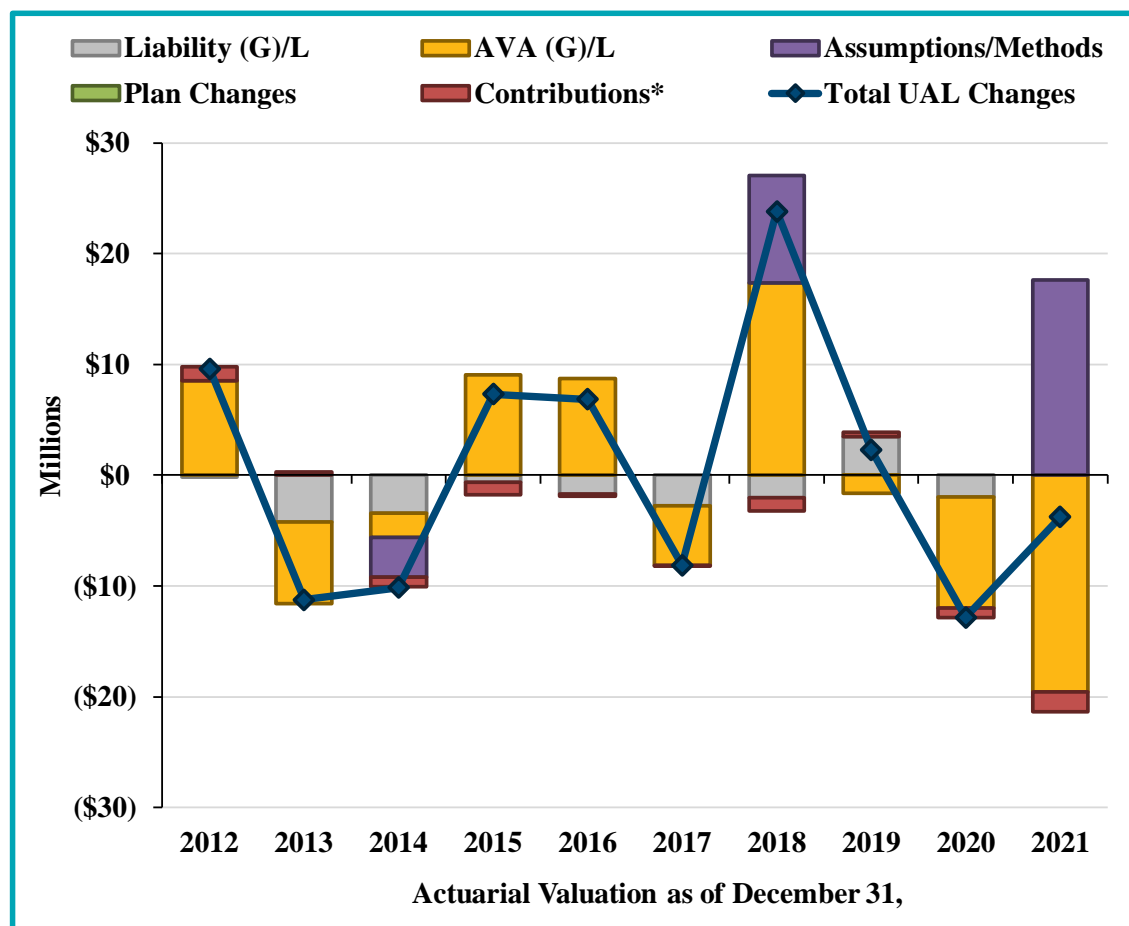
**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Longevity and other demographic risks are the potential for mortality or other demographic experience to be different than expected. Generally, longevity and other demographic risks emerge slowly over time and are often dwarfed by other changes, particularly those due to investment returns. The System has generally experienced liability gains over the last ten years, except for 2019 and 2021.

Assumption change risk is the potential for the environment to change such that future valuation assumptions are different than the current assumptions. Increases in UAL from assumption changes were related to experience studies in which demographic and economic assumptions were adjusted. Assumption change risk is an extension of the other risks identified, but rather than capturing the risk as it is experienced, it captures the cost of recognizing a change in environment when the current assumption is no longer reasonable.

The chart below shows the components of changes in the UAL over the last ten years, which demonstrates how many of the risks mentioned above impact the financial status of the System. While a lot of attention is given to the demographic assumptions, the primary risk for the health of the System is the return on investments earned each year.



* UAL change due to contributions (greater)/less than normal cost-plus interest on the UAL.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Table II-1 summarizes the changes in the UAL over the last ten years.

Table II-1 Changes in Unfunded Actuarial Liability (Dollar amounts in millions)											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Discount Rate	7.75%	7.75%	7.75%	7.75%	7.75%	7.75%	7.50%	7.50%	7.50%	7.25%	
Source											
AVA (G)/L	\$ 8.5	\$ (7.4)	\$ (2.2)	\$ 9.1	\$ 8.7	\$ (5.3)	\$ 17.4	\$ (1.6)	\$ (10.1)	\$ (19.6)	\$ (2.5)
Liability (G)/L	(0.2)	(4.2)	(3.4)	(0.7)	(1.7)	(2.8)	(2.0)	3.5	(2.0)	0.1	(13.4)
Assumptions/Methods	0.0	0.0	(3.6)	0.0	0.0	0.0	9.7	0.0	0.0	17.5	23.6
Plan/Policy Changes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contributions*	1.3	0.3	(0.9)	(1.1)	(0.2)	(0.0)	(1.2)	0.4	(0.8)	(1.8)	(4.0)
Net UAL Change	\$ 9.6	\$ (11.3)	\$ (10.1)	\$ 7.3	\$ 6.9	\$ (8.1)	\$ 23.8	\$ 2.3	\$ (12.8)	\$ (3.8)	\$ 3.7

* UAL change due to contributions (greater)/less than normal cost plus interest on the UAL

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

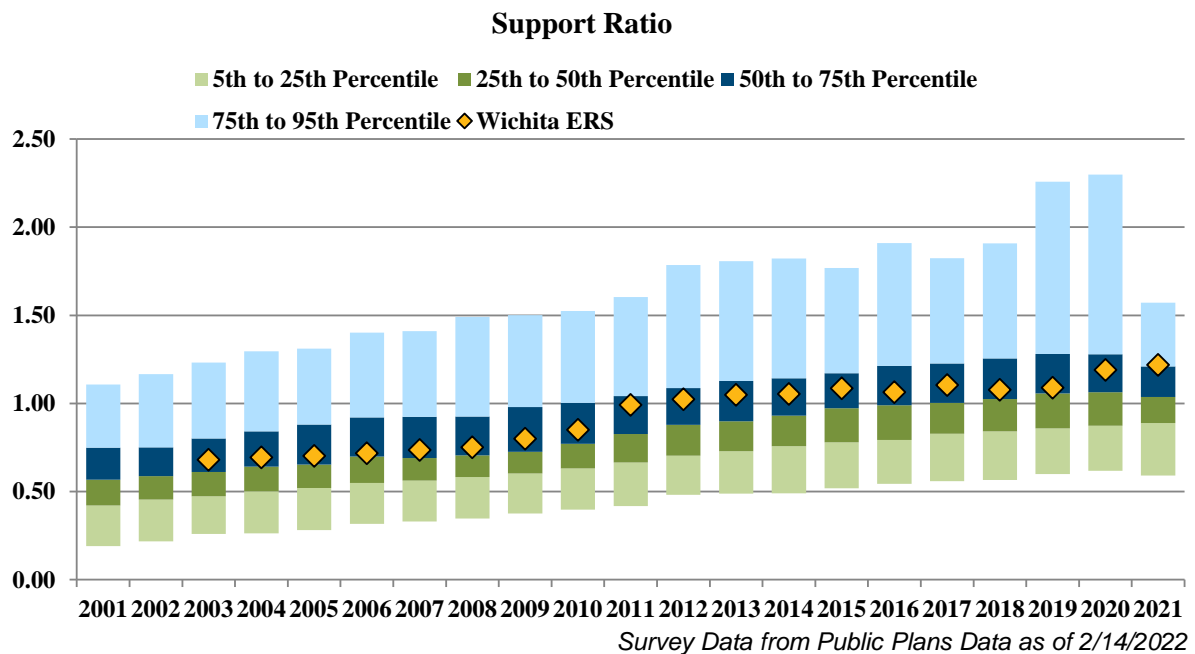
Plan Maturity Measures

The future financial condition of a mature pension plan is more sensitive to each of the risks identified above than a less mature plan. It is important to understand the maturity of this System compared to other plans and how the maturity has changed over time.

Plan maturity can be measured in a variety of ways, but they all get at one basic dynamic – the larger the Plan is compared to the contribution or revenue base that supports it, the more sensitive the Plan will be to risk. The measures below have been selected as the most important in understanding the primary risks identified for this System.

Inactives per Active (Support Ratio)

One simple measure of plan maturity is the ratio of the number of inactive members (those receiving benefits or entitled to a deferred benefit) to the number of active members. This ratio is referred to as the support ratio. The revenue base supporting the Plan is usually proportional to the number of active members, so a relatively high support ratio indicates a larger plan relative to its revenue base.



The chart above shows the distribution from the 5th to 95th percentile of support ratios for the Plans in the Public Plans Database. The gold diamond shows how the Wichita Employees' Retirement System compares to the other plans.

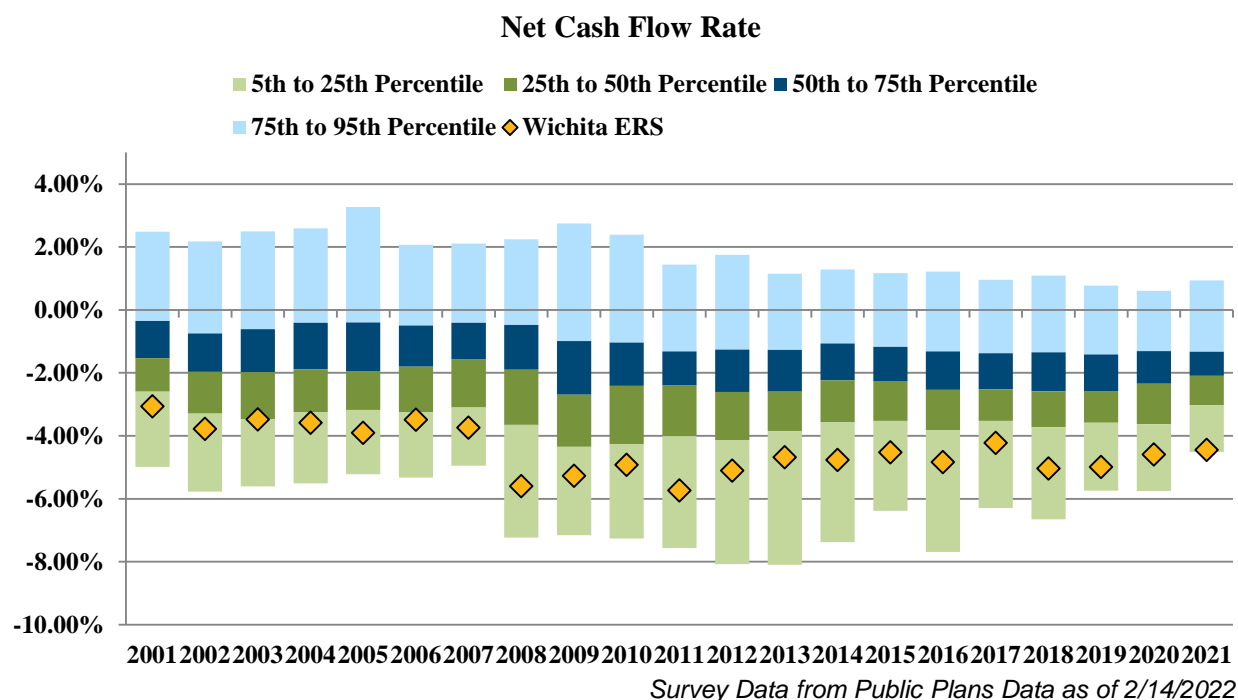
**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

The System's support ratio has generally been among the 50th to 75th percentile of the Public Plans Database meaning that the System is slightly more mature than the average plan in the Database. The System's support ratio has increased similarly to the average plan in the Database. This year's slight decrease in the active population resulted in the System's support ratio increasing above the 75th percentile for 2021, based on a limited number of Plans who have 2021 information reported in the Database.

Net Cash Flow

The net cash flow of the Plan as a percentage of the end of year assets indicates the sensitivity of the Plan to short-term investment returns. Net cash flow is equal to contributions less benefit payments. Mature plans can have large amounts of benefit payments compared to contributions, particularly if they are well funded, which is the case for this System. Investment losses in the short-term are compounded by the net withdrawal from the Plan leaving a smaller asset base to try to recover from the investment losses. Large negative cash flows can also create liquidity issues.



The chart above shows the distribution from the 5th to 95th percentile of net cash flow for the Plans in the Public Plans Database. The gold diamond show how the System compares. The System's net cash flow has historically been in the 5th to 25th percentile compared to other plans. Based on this measure, the System is among the most mature plans in the Database, but this is partially because the contributions are lower than other plans in the Database that are less well funded.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

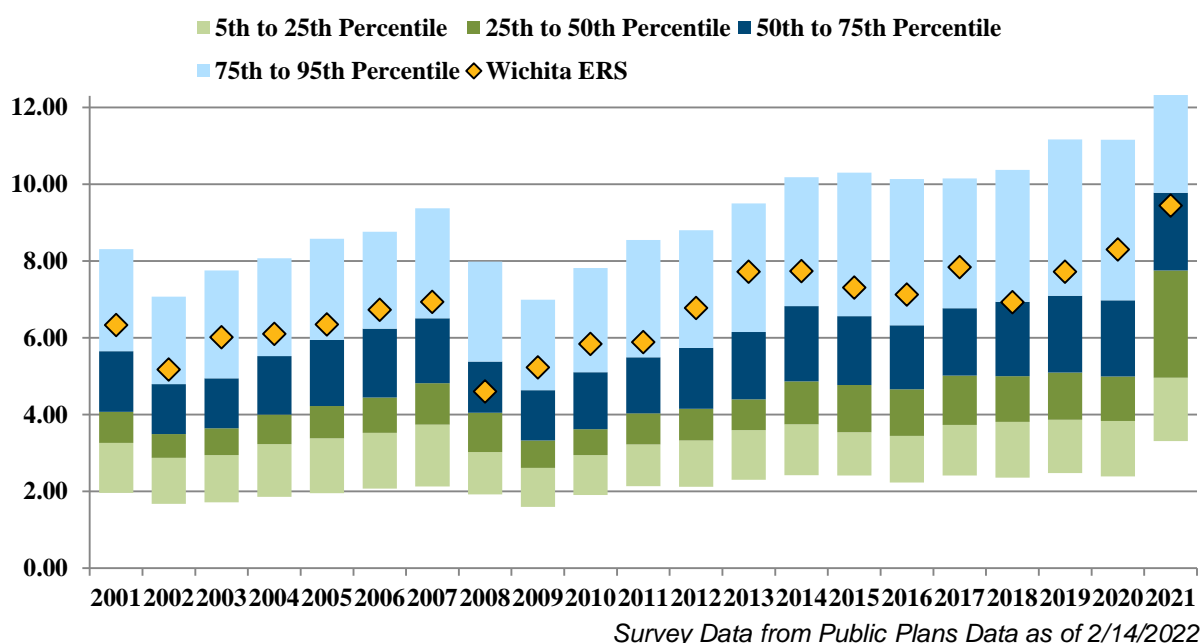
SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Leverage Ratios

Leverage or volatility ratios measure the size of the Plan compared to its revenue base more directly. An asset leverage ratio of 5.0, for example, means that if the System experiences a 10% loss on assets compared to the expected return, the loss would be equivalent to 50% of payroll.

The same investment loss for a system with an asset leverage ratio of 10.0 would be equivalent to 100% of payroll. As the System becomes better funded, the asset leverage ratio will increase, and if it was 100% funded, the asset leverage ratio would equal the liability leverage ratio.

Asset Leverage Ratio

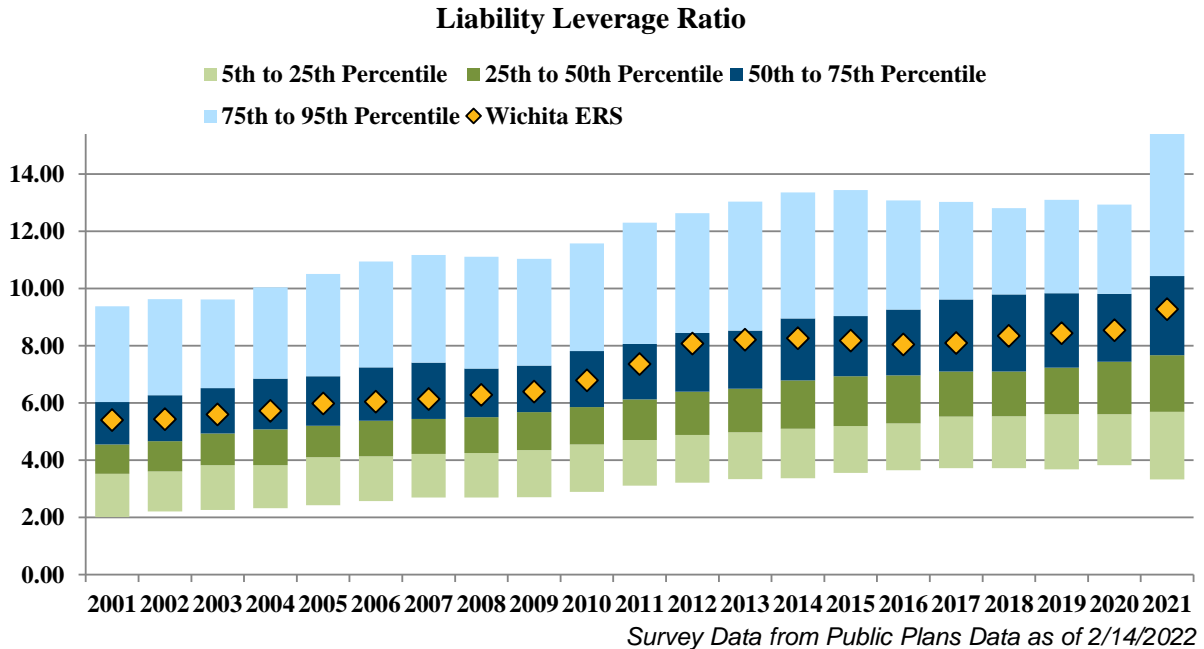


The chart above shows the distribution from the 5th to 95th percentile of asset leverage ratios for the plans in the Public Plans Database. The gold diamond shows how the System compares. The System's asset leverage ratio has historically been in the 75th to 95th percentile compared to other plans, except for the current year which may be due to the limited number of Plans who have 2021 information reported in the Database. Based on this measure, the System is among the most mature plans in the Database partially because it is better funded than most plans in the Database.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION II – IDENTIFICATION AND ASSESSMENT OF RISK

Similar to the asset leverage ratio, a liability leverage ratio of 5.0 means that if the System experiences a 10% loss on liabilities, the liability loss would be equivalent to 50% of payroll.



The chart above shows the distribution from the 5th to 95th percentile of liability leverage ratios for the Plans in the Public Plans Database. The gold diamond shows how the System compares.

The System's liability leverage ratio has historically been in the 50th to 75th percentile compared to other plans, meaning that the System is more sensitive to risk compared to the average plan in the Database. As the System matures and more of the liability is due to inactive members, this ratio will continue to increase. The ratio has increased from about 5.4 in 2001 to a ratio of about 9.3 in 2021.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Pension plan assets play a key role in the financial operation of the System and in the decisions the Trustees may make with respect to future deployment of those assets. The level of assets, the allocation of assets among asset classes, and the methodology used to measure assets will likely impact benefit levels, employer contributions, and the ultimate security of members' benefits.

In this section, we present detailed information on the System assets including:

- Disclosure of the System assets as of December 31, 2020 and December 31, 2021;
- Statement of the changes in market values during the year;
- Development of the Actuarial Value of Assets;
- An assessment of investment performance; and
- A projection of the System's expected cash flows for the next ten years.

Disclosure

There are two types of asset values disclosed in this valuation, the Market Value of Assets and the Actuarial Value of Assets. The market value represents a “snap-shot” or “cash-out” value which provides the principal basis for measuring financial performance from one year to the next. Market values, however, can fluctuate widely with corresponding swings in the marketplace. As a result, market values are usually not as suitable for long-range planning as are the Actuarial Value of Assets which reflect smoothing of annual investment returns.

Table III-1 below discloses and compares the Market Value of Assets as of December 31, 2020 and December 31, 2021.

Table III-1				
Statement of Assets at Market Value as of December 31,				
Assets	2021	2020	% change	
Cash	\$ 107,095	\$ 121,319	(11.7%)	
Receivables	7,176,326	3,953,021	81.5%	
U.S. Government Securities	17,635,756	15,919,896	10.8%	
Fixed Income	127,315,808	116,314,013	9.5%	
Domestic Equity	306,462,152	275,437,918	11.3%	
International Equity	194,958,750	185,839,428	4.9%	
Real Estate	46,945,401	39,776,588	18.0%	
Timber	32,460,828	35,108,322	(7.5%)	
Derivatives	110,554	196,014	(43.6%)	
Accounts Payable	(1,261,927)	(855,595)	47.5%	
Investment Purchases Pending	<u>(3,192,834)</u>	<u>(4,781,818)</u>	(33.2%)	
Market Value of Assets	\$ 728,717,909	\$ 667,029,106	9.2%	
Plans 1 & 2	716,107,449	653,520,089	9.6%	
Plan 3 ¹	<u>12,610,460</u>	<u>13,509,017</u>	(6.7%)	
Total	\$ 728,717,909	\$ 667,029,106	9.2%	

¹ Excludes Plan 3b assets.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Changes in Market Value

Table III-2 below shows the components of change between the Market Value of Assets as of December 31, 2020 and December 31, 2021.

Table III-2			
Changes in Market Values¹			
	Plans 1 & 2	Plan 3	Total
Market Value of Assets as of December 31, 2020	\$ 653,520,089	\$ 13,509,017	\$ 667,029,106
Additions			
Employee Contributions	2,302,063	1,330,650	3,632,713
Employer Contributions	9,391,963	1,330,531	10,722,494
Transfers	4,129,580	(4,546,718)	(417,138)
Interest and Dividends	30,760,143	573,184	31,333,327
Net Investment Return	<u>62,858,665</u>	<u>1,164,935</u>	<u>64,023,600</u>
Total Additions	109,442,414	(147,418)	109,294,996
Deductions			
Benefit Payments	46,116,218	0	46,116,218
Administrative Expenses	621,091	(15,173)	605,918
Refunds	<u>117,745</u>	<u>766,312</u>	<u>884,057</u>
Total Deductions	46,855,054	751,139	47,606,193
Market Value of Assets as of December 31, 2021	\$ 716,107,449	\$ 12,610,460	\$ 728,717,909

¹ Excludes Plan 3b assets.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Actuarial Value of Assets

The Actuarial Value of Assets (AVA) represents a “smoothed” value developed by the actuary to reduce, or eliminate, erratic results which could develop from short-term fluctuations in the Market Value of Assets (MVA). For this System, the Actuarial Value of Assets is calculated as the expected Actuarial Value of Assets plus 25% of the difference between the expected Actuarial Value of Assets and the actual Market Value of Assets. The expected Actuarial Value of Assets is calculated based on the prior year’s Actuarial Value of Assets, plus net cash flows, plus an expected return of 7.50% for the year ended December 31, 2021. If the resulting Actuarial Value of Assets is less than 80% or more than 120% of the market value, an adjustment is made to the actuarial value to bring the value within this corridor. Table III-3 illustrates the calculation of the Actuarial Value of Assets for the December 31, 2021 valuation.

Table III-3 Development of Actuarial Value of Assets			
	Plans 1 & 2	Plan 3	Total
AVA as of December 31, 2020	\$ 624,044,184	\$ 12,832,777	\$ 636,876,961
Employee Contributions	\$ 2,302,063	\$ 1,330,650	\$ 3,632,713
Employer Contributions	9,391,963	1,330,531	10,722,494
Benefit Payments and Refunds	(46,233,963)	(766,312)	(47,000,275)
Transfers	<u>4,129,580</u>	<u>(4,546,718)</u>	<u>(417,138)</u>
Net Cash Flow	\$ (30,410,357)	\$ (2,651,849)	\$ (33,062,206)
Expected Return at 7.50%	\$ 45,683,541	\$ 864,812	\$ 46,548,353
Expected AVA as of December 31, 2021	\$ 639,317,368	\$ 11,045,740	\$ 650,363,108
MVA as of December 31, 2021	716,107,449	12,610,460	728,717,909
Difference Between Expected AVA and Actual MVA	\$ 76,790,081	\$ 1,564,720	\$ 78,354,801
Initial AVA	\$ 658,514,888	\$ 11,436,920	\$ 669,951,808
Corridor for AVA			
80% of MVA	\$ 572,885,959	\$ 10,088,368	\$ 582,974,327
120% of MVA	859,328,939	15,132,552	874,461,491
AVA as of December 31, 2021	\$ 658,514,888	\$ 11,436,920	\$ 669,951,808
AVA / MVA	92.0%	90.7%	91.9%
MVA Less AVA	\$ 57,592,561	\$ 1,173,540	\$ 58,766,101

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Investment Performance

The Market Value of Assets (MVA) returned 14.6% during plan year ending December 31, 2021, which is more than the assumed 7.50% return for the year. A return of 10.7% was experienced on the Actuarial Value of Assets (AVA), resulting in an actuarial gain for the year. Below, we show additional historical returns.

Table III-4 Historical Returns		
Fiscal Year	MVA	AVA
2012	13.3%	6.1%
2013	19.6%	9.2%
2014	5.1%	8.2%
2015	-0.1%	6.1%
2016	6.7%	6.2%
2017	17.0%	8.7%
2018	-6.7%	4.8%
2019	19.3%	7.8%
2020	13.3%	9.2%
2021	14.6%	10.7%

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION III – ASSETS

Projection of System's Future Cash Flows

Table III-5 Projection of System's Expected Cash Flows			
Year Beginning January 1,	Benefit Payments	Employer and Employee Contributions	Net Cash Flow
2022	\$54,213,162	\$14,113,018	(\$40,100,144)
2023	49,419,307	14,654,485	(34,764,822)
2024	50,543,010	13,848,488	(36,694,522)
2025	52,610,800	13,151,148	(39,459,652)
2026	53,191,945	12,758,379	(40,433,566)
2027	55,733,372	12,796,654	(42,936,718)
2028	55,876,590	13,212,546	(42,664,044)
2029	58,735,584	13,641,953	(45,093,631)
2030	59,917,191	14,085,317	(45,831,874)
2031	60,181,419	14,543,090	(45,638,329)

Expected contributions assume contribution rates as shown in the graph on page 6 and that payroll will increase at the actuarially assumed rate of 3.25% per year. Expected benefit payments are projected for the closed group valued at December 31, 2021. Projecting any farther than ten years using a closed group would not yield reliable predictions due to the omission of new hires.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

In this section, we present detailed information on the System liabilities including:

- **Disclosure** of the System liabilities as of December 31, 2020 and December 31, 2021, and
- Statement of **changes** in the Unfunded Actuarial Liability during the year.

Disclosure

Several types of liabilities are calculated and presented in this report. Each type is distinguished by the people ultimately using the figures and the purpose for which they are using them.

- **Present Value of All Future Benefits:** Used for measuring all future System obligations, represents the amount of money needed today to fully fund all benefits of the System both earned as of the valuation date and those expected to be earned in the future by current plan members, under the current plan provisions.
- **Actuarial Liability:** Calculated as of the valuation date as the Present Value of Benefits allocated to service prior to that date. The Actuarial Liability is determined using the Entry Age Normal method.

These liabilities are for funding purposes and are not appropriate for measuring the cost of settling plan liabilities by purchasing annuities or paying lump-sums.

Table IV-1, which follows, discloses each of these liabilities for the current and prior valuations. With respect to each disclosure, a subtraction of the appropriate value of plan assets yields, for each respective type, a **net surplus** or an **Unfunded Liability**.

Table IV-1			
Liabilities/Net (Surplus)/Unfunded			
		December 31, 2021	December 31, 2020
<u>Present Value of Future Benefits</u>			
Active and DROP Member Benefits	\$	328,632,003	\$ 315,700,708
Retiree, Disabled and Beneficiaries Benefits		433,690,158	409,324,401
Inactive Member Benefits		<u>31,408,287</u>	<u>31,964,390</u>
Present Value of Future Benefits (PVB)	\$	793,730,448	\$ 756,989,499
<u>Actuarial Liability</u>			
Active and DROP Member Benefits	\$	250,429,690	\$ 244,932,295
Retiree, Disabled and Beneficiaries Benefits		433,690,158	409,324,401
Inactive Member Benefits		<u>31,408,287</u>	<u>31,964,390</u>
Actuarial Liability (AL)	\$	715,528,135	\$ 686,221,086
Actuarial Value of Assets (AVA)	\$	<u>669,951,808</u>	\$ 636,876,961
Net (Surplus)/Unfunded (AL-AVA)	\$	45,576,327	\$ 49,344,125

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Changes in Unfunded Actuarial Liability

Each of the liabilities disclosed in the prior table are expected to change at each valuation. The components of that change, depending upon which liability is analyzed, can include:

- New hires since the last valuation
- Benefits accrued since the last valuation
- System amendments changing benefits
- Passage of time which adds interest to the prior liability
- Benefits paid to retirees since the last valuation
- Members retiring, terminating, or dying at rates different than expected
- A change in actuarial or investment assumptions
- A change in the actuarial funding method

The Unfunded Actuarial Liability will change because of all of the above, and also due to changes in plan assets resulting from:

- Employer contributions more or less than tread water (normal cost-plus interest on the UAL)
- Investment earnings different than expected
- A change in the method used to measure plan assets

In each valuation, we report on those elements of change which are of particular significance, potentially affecting the long-term financial outlook of the System. Below, we present the reconciliation of the Unfunded Actuarial Liability since the last valuation.

In the table that follows, we show the components of change in the Actuarial Liability between December 31, 2020 and December 31, 2021.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-2 Development of Experience (Gain)/Loss			
	Actuarial Liability	Actuarial Value of Assets	Unfunded Actuarial Liability
Value as of December 31, 2020	\$ 686,221,086	\$ 636,876,961	\$ 49,344,125
Changes for the year:			
Normal Cost	\$ 8,748,390	\$ 0	\$ 8,748,390
Contributions	0	14,355,207	(14,355,207)
Benefit Payments	(47,000,275)	(47,000,275)	0
Transfers to Plan 3b	(417,138)	(417,138)	0
Expected Interest	50,376,704	46,548,353	3,828,351
Change in Methods/Assumptions	17,545,038	0	17,545,038
Change in Benefits	<u>0</u>	<u>0</u>	<u>0</u>
Expected Value as of December 31, 2021	\$ 715,473,805	\$ 650,363,108	\$ 65,110,697
Actual Value as of December 31, 2021	\$ 715,528,135	\$ 669,951,808	\$ 45,576,327
Actuarial (Gain)/Loss	\$ 54,330	\$ (19,588,700)	\$ (19,534,370)

In addition, we breakdown the change in Actuarial Liability further by showing the liability (gain)/loss by source, as shown in Table IV-3 below.

Table IV-3 Liability (Gain)/Loss by Source as of December 31, 2021	
Service and Salary Increases	\$ (1,721,547)
Retirements	656,353
Terminations	719,630
Pre-Retirement Mortality	(956,956)
Post-Retirement Mortality	413,272
New Hires	639,532
Other Demographic Changes	750,628
Plan 3 Reserve	(446,582)
Total Liability (Gain)/Loss	\$ 54,330

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-4 Present Value of Future Benefits (PVFB) As of December 31, 2021				
	Plan 1	Plan 2	Plan 3	Total
Active Members				
Retirement Benefits	\$ 0	\$ 223,913,869	\$ 48,706,540	\$ 272,620,409
Pre-Retirement Death Benefits	0	2,508,774	777,419	3,286,193
Termination Benefits	0	6,050,092	7,211,507	13,261,599
Total	\$ 0	\$ 232,472,735	\$ 56,695,466	\$ 289,168,201
DROP Members				
DROP Account Balance	\$ 0	\$ 5,237,723	\$ 0	\$ 5,237,723
Monthly Retirement Benefit	0	34,226,079	0	34,226,079
Total	\$ 0	\$ 39,463,802	\$ 0	\$ 39,463,802
Inactive Vested Members	\$ 0	\$ 30,883,636	\$ 0	\$ 30,883,636
Inactive Non-Vested Members	\$ 0	\$ 2,276	\$ 522,375	\$ 524,651
In Pay Members				
Retirees	\$ 170,573,156	\$ 225,739,753	\$ 0	\$ 396,312,909
Disabled Members	906,653	1,472,244	0	2,378,897
Beneficiaries	21,905,377	13,092,975	0	34,998,352
Total	\$ 193,385,186	\$ 240,304,972	\$ 0	\$ 433,690,158
Grand Total	\$ 193,385,186	\$ 543,127,421	\$ 57,217,841	\$ 793,730,448

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION IV – LIABILITIES

Table IV-5 Actuarial Liability As of December 31, 2021				
	Plan 1	Plan 2	Plan 3	Total
Active Members				
Present Value of Future Benefits	\$ 0	\$ 232,472,735	\$ 56,695,466	\$ 289,168,201
Present Value of Future Normal Cost	0	(38,837,363)	(38,191,410)	(77,028,773)
Actuarial Liability	\$ 0	\$ 193,635,372	\$ 18,504,056	\$ 212,139,428
DROP Members				
	\$ 0	\$ 39,463,802	\$ 0	\$ 39,463,802
Inactive Vested Members				
	\$ 0	\$ 30,883,636	\$ 0	\$ 30,883,636
Inactive Non-Vested Members				
	\$ 0	\$ 2,276	\$ 522,375	\$ 524,651
In Pay Members				
Retirees	\$ 170,573,156	\$ 225,739,753	\$ 0	\$ 396,312,909
Disabled Members	906,653	1,472,244	0	2,378,897
Beneficiaries	21,905,377	13,092,975	0	34,998,352
Total	\$ 193,385,186	\$ 240,304,972	\$ 0	\$ 433,690,158
Reserve for Plan 3 Members				
	\$ 0	\$ 0	\$ (1,173,540)	\$ (1,173,540)
Grand Total				
	\$ 193,385,186	\$ 504,290,058	\$ 17,852,891	\$ 715,528,135

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION V – CONTRIBUTIONS

In the process of evaluating the financial condition of any pension plan, the actuary analyzes the assets and liabilities to determine what level (if any) of contributions is needed to properly maintain the funding status of the System. Typically, the actuarial process will use a funding technique that will result in a pattern of contributions that are both stable and predictable.

For this System, the funding method employed as of the December 31, 2021 valuation is the **Entry Age Normal (EAN)** actuarial cost method. Under this funding method, a normal cost rate is determined as a level percentage of pay for each active member. The normal cost rate multiplied by payroll equals the total normal cost for each active member. The total anticipated member contributions for the year are then subtracted from the sum of the total normal cost to arrive at the employer normal cost. The normal cost contributions (employer and active member) will pay for projected benefits at retirement for each active member. The EAN Actuarial Liability is the difference between the System's total Present Value of Future Benefits and the present value of future normal costs. The difference between the EAN Actuarial Liability and the Actuarial Value of Assets is the Unfunded Actuarial Liability (UAL).

The UAL is amortized over an open (rolling) 20-year period as a level percentage of payroll. Due to the nature of a rolling amortization method, the process of fully amortizing the UAL is slow and heavily contingent on investment returns.

Table V-1 below presents and compares the employer contribution rates for the System for this valuation and the prior one.

Table V-1		
Employer Contribution Rate		
	Fiscal Year	Fiscal Year
	Ending 2023	Ending 2022
Total Normal Cost Rate	13.6%	13.0%
Member Contribution Rate	<u>-4.7%</u>	<u>-4.7%</u>
Employer Normal Cost Rate	8.9%	8.3%
UAL Amortization Rate	<u>4.1%</u>	<u>4.6%</u>
Employer Contribution Rate	13.0%	12.9%

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION V – CONTRIBUTIONS

The UAL is amortized over an open (rolling) 20-year period as a level percentage of payroll. Table V-2 shows the calculation of the UAL amortization rates for this valuation and the prior one.

Table V-2 UAL Contribution Rate			
Valuation Date:	December 31, 2021		December 31, 2020
Contribution Rate For Fiscal Year Ending:	2023		2022
Actuarial Liability (AL)	\$	715,528,135	\$ 686,221,086
Actuarial Value of Assets (AVA)		<u>669,951,808</u>	<u>636,876,961</u>
Unfunded Actuarial Liability (UAL)	\$	45,576,327	\$ 49,344,125
UAL Amortization Payment at Mid-Year		3,306,326	3,653,000
Total Projected Payroll ¹		80,187,603	79,334,562
UAL Amortization Rate		4.1%	4.6%

¹ Includes payroll for DROP members

Table V-3 shows the calculation of the total normal cost rates for this valuation and the prior one.

Table V-3 Normal Cost Rate				
Valuation Date:	December 31, 2021		December 31, 2020	
Contribution Rate For Fiscal Year Ending:	2023		2022	
	Amount	% of Pay	Amount	% of Pay
Normal Cost				
Retirement Benefits	\$ 7,682,950	11.2%	\$ 7,174,858	10.7%
Pre-Retirement Death Benefits	147,283	0.2%	143,286	0.2%
Termination Benefits	<u>1,494,228</u>	<u>2.2%</u>	<u>1,430,246</u>	<u>2.1%</u>
Total Normal Cost ¹	9,324,461	13.6%	8,748,390	13.0%
Expected Payroll for Current Actives ^{1,2}	68,387,618		67,474,566	

¹ As of the beginning of the year

² Excludes payroll for DROP members

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

GFOA Recommended Information

The Government Finance Officers Association (GFOA) maintains a checklist of items to be included in a public retirement system's Annual Comprehensive Financial Report in order to receive recognition for excellence in financial reporting. The GFOA checklist uses the term Actuarial Accrued Liability, which is the same as the Actuarial Liability used elsewhere in this report.

- Table VI-1: Analysis of Financial Experience
- Table VI-2: Schedule of Funded Liabilities by Type (Solvency Test)
- Table VI-3: Schedule of Funding Progress
- Table VI-4: Schedule Retirees and Beneficiaries Added to and Removed From Rolls

Table VI-1 Analysis of Financial Experience Change in Unfunded Actuarial Accrued Liability¹						
Valuation Date	Actuarial Value Of Assets Investment	Actuarial Accrued Liability	Assumption & Method Changes	Plan Changes	Contributions²	Change in Unfunded Actuarial Accrued Liability
December 31,	(Gain)/Loss	(Gain)/Loss				
2012	\$ 8,500,000	\$ (200,000)	\$ 0	\$ 0	\$ 1,300,000	\$ 9,610,063
2013	(7,400,000)	(4,200,000)	0	0	300,000	(11,256,917)
2014	(2,200,000)	(3,400,000)	(3,600,000)	0	(900,000)	(10,145,169)
2015	9,072,224	(656,102)	0	0	(1,108,924)	7,307,198
2016	8,728,130	(1,700,343)	0	0	(170,715)	6,857,072
2017	(5,328,204)	(2,782,038)	0	0	(23,513)	(8,133,755)
2018	17,362,307	(2,031,565)	9,670,284	0	(1,184,746)	23,816,280
2019	(1,609,761)	3,504,370	0	0	369,201	2,263,810
2020	(10,050,715)	(1,950,150)	0	0	(848,933)	(12,849,798)
2021	(19,588,700)	54,330	17,545,038	0	(1,778,466)	(3,767,798)

¹ Prior to 2015, the details were reported rounded to the nearest \$100,000, so the components do not sum to the total change in the UAL.

² Change due to contributions (greater)/less than normal cost plus interest on the Unfunded Actuarial Accrued Liability.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

**Table VI-2
Schedule of Funded Liabilities by Type (Solvency Test)**

Valuation Date December 31,	Active Member Contributions ¹	Inactive Members, Retirees, and Beneficiaries	Active Member Employer Financed Contributions ¹	Reported Actuarial Value of Assets	Portion of Actuarial Liabilities Covered by Reported Assets		
	(1)	(2)	(3)		(1)	(2)	(3)
2012	\$ 49,519,050	\$ 347,350,296	\$ 174,936,109	\$ 520,320,051	100.0%	100.0%	70.6%
2013	50,337,976	362,224,034	169,823,819	542,157,342	100.0%	100.0%	76.3%
2014	51,408,059	369,926,908	168,780,115	560,031,764	100.0%	100.0%	82.2%
2015	51,609,961	378,186,127	176,058,606	568,464,178	100.0%	100.0%	78.8%
2016	53,587,062	385,231,766	181,400,097	575,971,337	100.0%	100.0%	75.6%
2017	55,050,806	395,107,729	184,748,720	598,793,422	100.0%	100.0%	80.5%
2018	56,965,551	408,534,420	193,208,730	598,778,588	100.0%	100.0%	69.0%
2019	56,989,509	422,969,785	195,297,778	613,063,149	100.0%	100.0%	68.2%
2020	56,284,261	441,288,791	188,648,034	636,876,961	100.0%	100.0%	73.8%
2021	55,727,450	465,098,445	194,702,240	669,951,808	100.0%	100.0%	76.6%

¹ Includes DROP members.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

<p style="text-align: center;">Table VI-3 Schedule of Funding Progress</p>						
Valuation Date December 31,	Actuarial Value of Assets (a)	Actuarial Liability (b)	Unfunded Actuarial Liability (b) - (a)	Ratio Ratio (a) / (b)	Covered Payroll (c)	UAL as a Percentage of Covered Payroll [(b) - (a)] / (c)
2012	\$ 520,320,051	\$ 571,805,455	\$ 51,485,404	91.0%	\$ 70,783,047	72.7%
2013	542,157,342	582,385,829	40,228,487	93.1%	70,953,452	56.7%
2014	560,031,764	590,115,082	30,083,318	94.9%	71,391,212	42.1%
2015	568,464,178	605,854,694	37,390,516	93.8%	74,028,385	50.5%
2016	575,971,337	620,218,925	44,247,588	92.9%	77,121,241	57.4%
2017	598,793,422	634,907,255	36,113,833	94.3%	78,394,634	46.1%
2018	598,778,588	658,708,701	59,930,113	90.9%	78,898,648	76.0%
2019	613,063,149	675,257,072	62,193,923	90.8%	80,029,364	77.7%
2020	636,876,961	686,221,086	49,344,125	92.8%	80,365,628	61.4%
2021	669,951,808	715,528,135	45,576,327	93.6%	77,140,245	59.1%

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

SECTION VI – ACCOUNTING STATEMENT INFORMATION

Table VI-4 Schedule Retirees and Beneficiaries Added to and Removed From Rolls ¹								
Valuation Date December 31,	Added to Rolls		Removed from Rolls		Rolls at End of Year		Average Annual Allowance	% Increase in Average Annual Allowance
	Number	Annual Allowance	Number	Annual Allowance	Number	Annual Allowance		
2012	50	\$ 1,010,373	58	\$ 1,036,870	1,302	\$ 31,730,663	\$ 24,371	-2.9%
2013	72	1,676,296	47	744,036	1,327	33,294,857	25,090	3.0%
2014	68	1,549,070	54	927,726	1,341	34,427,388	25,673	2.3%
2015	90	1,830,381	51	1,132,754	1,380	35,726,088	25,888	0.8%
2016	78	1,730,868	65	1,194,869	1,393	36,931,056	26,512	2.4%
2017	71	1,678,547	48	1,153,410	1,416	38,125,080	26,924	1.6%
2018	77	1,811,362	72	1,537,746	1,421	39,094,992	27,512	2.2%
2019	78	2,148,529	69	1,428,652	1,430	40,503,100	28,324	2.9%
2020	86	2,425,255	57	1,426,896	1,459	42,141,748	28,884	2.0%
2021	103	2,911,475	68	1,555,927	1,494	44,052,935	29,487	2.1%

¹ Excludes DROP members.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-1 Table of Plan Coverage			
	December 31, 2021	December 31, 2020	% change
Active Members (excludes DROP)			
Number	1,343	1,347	-0.3%
Average Age	46.5	46.9	-0.8%
Average Service	11.6	11.7	-1.0%
Total Payroll	\$71,480,161	\$70,301,792	1.7%
Average Payroll	53,224	52,191	2.0%
DROP Members			
Number	71	81	-12.3%
Average Age	64.3	64.3	0.1%
Average Service	26.1	29.0	-9.9%
Total DROP Account Balances	\$5,237,723	\$5,294,979	-1.1%
Average DROP Account Balances	73,771	65,370	12.9%
Inactive Vested Members	143	143	0.0%
Inactive Non-Vested Members	94	126	-25.4%
Pensioners:			
Number in Pay Status			
Retirees	1,204	1,172	2.7%
Disabled Retirees	<u>15</u>	<u>16</u>	-6.3%
Total	1,219	1,188	2.6%
Average Age	72.7	72.6	0.2%
Average Monthly Benefit	\$2,723	\$2,683	1.5%
Beneficiaries:			
Number in Pay Status ¹	275	271	1.5%
Average Age	75.9	75.1	1.2%
Average Monthly Benefit	\$1,278	\$1,197	6.7%

¹ Includes 10 QDROs in 2020 and 9 QDROs in 2021

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

**Table A-2
Member Status Reconciliation**

	<u>Active</u>		<u>DROP</u>	<u>Inactive Vested</u>	<u>Inactive Non-Vested</u>	<u>Disabled</u>		<u>Retired</u>		<u>Beneficiary</u>		<u>Total</u>
	<u>Plan 2</u>	<u>Plan 3</u>	<u>Plan 2</u>	<u>Plan 2</u>	<u>Plan 3</u>	<u>Plan 1</u>	<u>Plan 2</u>	<u>Plan 1</u>	<u>Plan 2</u>	<u>Plan 1</u>	<u>Plan 2</u>	
December 31, 2020	709	638	81	143	126	4	12	419	753	155	116	3,156
New hires	1	164	0	0	0	0	0	0	0	0	0	165
Re-hires	3	3	(1)	(1)	(4)	0	0	0	0	0	0	0
Enter DROP	(24)	0	24	0	0	0	0	0	0	0	0	0
Exit DROP	0	0	(33)	0	0	0	0	0	33	0	0	0
Terminated	(11)	(49)	0	13	47	0	0	0	0	0	0	0
Refunded	(3)	(51)	0	(1)	(68)	0	0	0	0	0	0	(123)
Retired	(20)	(5)	0	(19)	0	0	0	0	44	0	0	0
Disabled	0	0	0	0	0	0	0	0	0	0	0	0
Deceased (with beneficiary)	(4)	0	0	0	0	0	(1)	(11)	(8)	13	13	2
Deceased (without beneficiary)	0	(1)	0	(1)	0	0	0	(14)	(12)	(11)	(7)	(46)
Transfer to Plan 2	57	(57)	0	0	0	0	0	0	0	0	0	0
Transfer to Plan 3b	0	(7)	0	0	(1)	0	0	0	0	0	0	(8)
Benefits expired	0	0	0	0	0	0	0	0	0	0	(4)	(4)
Status correction	<u>0</u>	<u>0</u>	0	<u>9</u>	<u>(6)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Net Change	(1)	(3)	(10)	0	(32)	0	(1)	(25)	57	2	2	(11)
December 31, 2021	708	635	71	143	94	4	11	394	810	157	118	3,145

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-3										
Average Monthly Benefits for New Retirees ¹										
	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
Average Monthly Pension										
0 - 5 Years of Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5 - 10 Years of Service	806	711	779	709	1,092	648	746	665	1,164	980
10 - 15 Years of Service	1,824	1,169	1,196	989	1,332	1,159	1,095	950	1,278	921
15 - 20 Years of Service	1,785	1,799	1,986	1,795	2,175	1,915	1,791	1,624	1,621	2,026
20 - 25 Years of Service	2,127	2,412	2,155	2,291	2,299	2,249	1,861	1,957	1,992	2,492
25 - 30 Years of Service	4,109	2,568	3,485	2,617	2,395	2,849	2,983	2,230	2,433	2,477
30+ Years of Service	3,721	4,281	3,752	4,020	4,235	3,456	4,003	3,217	3,891	3,455
Average for All Years of Service	\$ 2,343	\$ 2,431	\$ 2,551	\$ 2,573	\$ 2,310	\$ 2,167	\$ 2,174	\$ 1,921	\$ 1,760	\$ 2,084
Average Final Average Salary										
0 - 5 Years of Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5 - 10 Years of Service	4,632	3,914	4,490	4,185	5,807	3,293	3,823	3,206	5,437	3,361
10 - 15 Years of Service	6,156	4,030	4,403	3,930	4,722	4,226	3,617	3,353	4,091	3,472
15 - 20 Years of Service	4,945	4,751	4,795	4,422	5,699	4,837	4,546	4,343	3,914	4,541
20 - 25 Years of Service	4,262	4,837	4,413	4,523	4,609	4,442	3,727	4,027	4,288	5,275
25 - 30 Years of Service	6,780	4,132	5,817	4,276	3,868	4,419	4,799	4,065	4,397	4,762
30+ Years of Service	4,771	5,419	4,811	5,148	5,425	4,322	5,197	4,495	5,388	5,125
Average for All Years of Service	\$ 5,287	\$ 4,827	\$ 4,843	\$ 4,617	\$ 4,971	\$ 4,289	\$ 4,367	\$ 4,026	\$ 4,409	\$ 4,460
Number of Members Retiring										
0 - 5 Years of Service	-	-	-	-	-	-	-	-	-	-
5 - 10 Years of Service	11	3	5	5	4	7	11	11	8	2
10 - 15 Years of Service	16	14	11	11	14	15	7	10	17	6
15 - 20 Years of Service	12	15	5	9	8	8	13	19	12	5
20 - 25 Years of Service	7	19	7	15	10	13	9	14	6	4
25 - 30 Years of Service	8	9	5	8	6	7	9	9	7	6
30+ Years of Service	14	17	22	26	10	17	13	20	4	4
Total for All Years of Service	68	77	55	74	52	67	62	83	54	27

¹ Includes new disabilities and members entering DROP.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX A – MEMBERSHIP INFORMATION

Table A-4 Retired Members by Type and Benefit Amount (as of December 31, 2021)							
Amount of Monthly Benefit	Active in DROP	Non- Service Disability	QDRO¹	Service	Service Disability	Survivor	Total
\$ 0-500	0	1	1	41	0	56	99
500-1000	3	5	4	132	1	55	200
1000-1500	4	1	2	166	0	60	233
1500-2000	9	2	0	162	2	49	224
2000-2500	6	1	1	133	1	28	170
2500-3000	11	1	1	107	0	10	130
3000-3500	10	0	0	98	0	3	111
3500-4000	8	0	0	114	0	3	125
4000-4500	7	0	0	66	0	0	73
4500-5000	6	0	0	66	0	0	72
>5000	7	0	0	119	0	2	128
Total	71	11	9	1,204	4	266	1,565

¹ Qualified Domestic Relations Order

Table A-5 Schedule of Active Member Valuation Data							
Valuation Date	Number of Members¹				Annual Covered Payroll (in Thousands)	Average Annual Pay	% Increase In Average Annual Pay
	Plan 1	Plan 2	Plan 3	Total			
12/31/2012	26	950	527	1,503	\$ 70,783	\$ 47,095	-2.7%
12/31/2013	15	957	517	1,489	70,953	47,652	1.2%
12/31/2014	8	989	520	1,517	71,391	47,061	-1.2%
12/31/2015	5	988	539	1,532	74,028	48,321	2.7%
12/31/2016	3	952	617	1,572	77,121	49,059	1.5%
12/31/2017	3	891	647	1,541	78,395	50,873	3.7%
12/31/2018	2	852	675	1,529	78,899	51,601	1.4%
12/31/2019	1	821	696	1,518	80,029	52,720	2.2%
12/31/2020	0	790	638	1,428	80,366	56,278	6.7%
12/31/2021	0	779	635	1,414	77,140	54,555	-3.1%

¹ Includes DROP members.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

A. Actuarial Assumptions

1. Investment Rate of Return

7.25% per year, compounded annually, net of investment and administrative expenses. This assumption is composed of a 2.75% long-term price inflation and a 4.50% real rate of return over price inflation.

2. Payroll Growth

3.25% per year.

3. Salary Increase

Salary increase varies by service as follows:

Years of Service	Inflation	Productivity	Merit and Longevity	Total Increase
0	2.75%	0.50%	3.25%	6.50%
1	2.75	0.50	3.10	6.35
2	2.75	0.50	2.90	6.15
3	2.75	0.50	2.70	5.95
4	2.75	0.50	2.50	5.75
5	2.75	0.50	2.30	5.55
6	2.75	0.50	2.10	5.35
7	2.75	0.50	1.90	5.15
8	2.75	0.50	1.80	5.05
9	2.75	0.50	1.70	4.95
10	2.75	0.50	1.60	4.85
11	2.75	0.50	1.50	4.75
12	2.75	0.50	1.40	4.65
13	2.75	0.50	1.30	4.55
14	2.75	0.50	1.20	4.45
15	2.75	0.50	1.06	4.31
16	2.75	0.50	0.92	4.17
17	2.75	0.50	0.78	4.03
18	2.75	0.50	0.64	3.89
19	2.75	0.50	0.50	3.75
20	2.75	0.50	0.35	3.60
21+	2.75	0.50	0.25	3.50

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

4. Mortality Rates

Healthy Retirees and Beneficiaries:

RP-2000 Healthy Annuitant Mortality Tables (set forward 2 years for males) with generational projection using Scale AA.

Disabled Retirees:

RP-2000 Disabled Mortality Tables with generational projection using Scale AA.

Active Members:

RP-2000 Employee Mortality Tables (set forward 2 years for males) with generational projection using Scale AA.

5. Termination Rates before Retirement

Termination rates vary by years of service as follows:

Years of Service	Rates	Years of Service	Rates
0-1	13.50%	15	3.00%
2	12.00	16	2.75
3	10.00	17	2.50
4	9.00	18	2.25
5	8.00	19	2.00
6	7.00	20	1.75
7	6.00	21	1.50
8	5.00	22	1.25
9-11	4.50	23-25	1.00
12	4.00	26-29	0.50
13	3.50	30+	0.00
14	3.25		

No termination is assumed after attainment of retirement eligibility. A percentage of vested members terminating employment are assumed to forfeit their deferred retirement benefit in lieu of a refund of their accumulated contributions with interest. The table below shows the percent of vested members assumed to forfeit their deferred annuity.

Years of Service	Percent Forfeiting
Under 15	60%
15-19	40
20-24	20
25+	0

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

6. Retirement Rates and Deferred Retirement Option Plan (DROP) Elections

Retirement rates vary by age and by plan as follows:

Age	Plan 1	Plan 2
55-59	15%	1%
60	40	3
61	40	10
62	20	50
63	20	25
64	20	25
65	100	40
66-69	N/A	40
70	N/A	100

In addition, 75% of Plan 2 members with 33 1/3 or more years of service who are at least age 62 are assumed to elect the DROP with an average DROP period of 36 months. The remaining 25% of Plan 2 members with 33 1/3 or more years of service who are at least age 62 are assumed to retire immediately.

Inactive vested members are assumed to retire at age 62.

7. Disability Rates

None assumed.

8. DROP Members

For purposes of calculating the Actuarial Liability, members in the DROP on the valuation date are assumed to exit the DROP immediately. For purposes of calculating projected payroll, members in DROP on the valuation date are assumed to exit the DROP based on the demographic assumptions for active members.

9. Unknown Data for Members

Same as those exhibited by members with similar known characteristics.

10. Rehires

No explicit assumption or load.

11. Sick Leave Load

The calculated normal retirement benefits are increased by 1.75% to account for the inclusion of unused sick leave in the calculation of service.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

12. Percent Married

70% of non-retired members are assumed to be married for purposes of death benefits.

13. Age of Spouse

Females (or males) are three years younger (or older) than their spouses.

14. Vested Deferred Pensions

Benefit amount is assumed to increase during the deferral period at 3.50% per year, compounded annually.

15. Increase in Section 415 and Section 401(a)(17) limits

2.75% per year.

16. Decrement Timing

Decrements are assumed to occur mid-year.

17. Plan 3 Transfer

All Plan 3 members are assumed to transfer to Plan 2 when they acquire 7 years of service.

18. Disclosures regarding Models Used

Cheiron utilizes ProVal, an actuarial valuation software leased from Winklevoss Technologies (WinTech) for the intended purpose of calculating liabilities and projected benefit payments. We have relied on WinTech as the developer of ProVal. We have reviewed ProVal and have a basic understanding of it and have used ProVal in accordance with its original intended purpose. We are not aware of any material inconsistencies, unreasonable output resulting from the aggregation of assumptions, material limitations or known weaknesses that would affect this report.

Projections in this report were developed using P-scan, our proprietary tool for the intended purpose of developing projections. The projections shown in this report cover multiple individual scenarios and the variables are not necessarily correlated. We are not aware of any material inconsistencies, unreasonable output resulting from aggregation of assumptions, material limitations or known weaknesses that would affect the projections shown in this report.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

19. Rationale for actuarial assumptions

The demographic actuarial assumptions were adopted by the Board of Trustees based upon recommendations made in an actuarial experience study covering the period January 1, 2014 through December 31, 2016, prepared by the prior actuary. The economic actuarial assumptions were adopted by the Board, effective with the December 31, 2021 valuation, based on recommendations from the economic experience study presented to the Board on March 9, 2022. Cheiron has reviewed the assumptions. While we consider these assumptions to be reasonable, we have not performed our own demographic actuarial experience study.

20. Changes in actuarial assumptions since last valuation

The investment return assumption was changed from 7.50% to 7.25%.

APPENDIX B – ACTUARIAL ASSUMPTIONS AND METHODS

B. Projection Assumptions

1. New Entrants

Active population is assumed to remain level.

2. Administrative Expenses

Assumed to be paid through future investment returns.

C. Actuarial Methods

1. Actuarial Value of Assets

The expected Actuarial Value of Assets plus 25% of the difference between the expected Actuarial Value of Assets and the actual Market Value of Assets. The expected Actuarial Value of Assets is calculated based on the prior year's Actuarial Value of Assets, plus net cash flows, plus the expected investment return. If the resulting Actuarial Value of Assets is less than 80% or more than 120% of the market value, an adjustment is made to the actuarial value to bring the value within this corridor.

2. Actuarial Cost Method

The cost method for valuation of liabilities used for this valuation is the Entry Age Normal (EAN) method. Under this funding method, a normal cost rate is determined as a level percentage of pay for each active member. The normal cost rate multiplied by payroll equals the total normal cost for each active member. The total anticipated member contributions for the year are then subtracted from the sum of the total normal cost to arrive at the employer normal cost. The EAN Actuarial Liability is the difference between the System's total Present Value of Future Benefits and the present value of future normal costs. The Unfunded Actuarial Liability is the difference between the Actuarial Liability and the Actuarial Value of Assets.

3. Amortization Method

The Unfunded Actuarial Liability is amortized over an open (rolling) 20-year period as a level percentage of payroll. If the Unfunded Actuarial Liability is negative, the Unfunded Actuarial Liability is not amortized and the actuarially determined employer contribution rate is equal to the employer normal cost rate.

4. Changes in Actuarial Methods since last valuation

None.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

1. Plan Year

January 1 through December 31.

2. Plans

Plan 1 is applicable to members employed prior to July 18, 1981, who have not elected to be covered by Plan 2.

Plan 2 is applicable to members employed or reemployed on or after July 18, 1981 and before January 1, 1994 and to other employees who have elected Plan 2 coverage.

Plan 3 is applicable to members employed on or after January 1, 1994, who have not become covered by Plan 2. Plan 3 members are automatically transferred to Plan 2 after they have seven years of service unless they file an irrevocable election to remain in Plan 3.

3. Final Average Salary

Average salary for the three consecutive years of service out of the last ten years of service which produce the highest average.

4. Normal Retirement

Eligibility:

For Plan 1 members, the earlier of:

- Age 60 with seven years of service, or
- 30 years of service.

For Plan 2 members, age 62 with seven years of service.

Amount:

For Plan 1 members, 2.50% of Final Average Salary times years of service.

For Plan 2 members, 2.25% of Final Average Salary times years of service.

Maximum amount is 75% of Final Average Salary.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

5. Early Retirement

Eligibility:	Age 55 with seven years of service.
Amount:	<p>For Plan 1 members, the normal retirement amount reduced for each month retirement precedes age 60. The reduction for each month retirement precedes age 60 is 0.05% for each year of service less than 30 to a maximum of 0.50% if years of service is less than 21.</p> <p>For Plan 2 members, the normal retirement amount reduced for each month retirement precedes age 62. The reduction is 0.6% per month for every year of age less than 62 with a maximum reduction of 50.4% at age 55.</p>

6. Deferred Retirement

Eligibility:	Seven years of service. Member may apply for a reduced benefit after attainment of early retirement eligibility or an unreduced benefit after attainment of normal retirement eligibility. Member may also elect a refund of accumulated contributions with interest in lieu of a deferred retirement benefit.
Amount:	The Accrued Benefit at termination is based on the normal retirement benefit formula. The Accrued Benefit is adjusted during the deferral period based on changes in the National Average Earnings, up to 5.5% annual adjustments.

7. Service-Connected Disability

Eligibility:	No age or service requirement. Requires total and permanent disability for employment by the city in a position commensurate with the employee's training, experience, and education.
Amount:	<p>For Plan 1 members, 60% of final rate of salary.</p> <p>For Plan 2 members, 50% of final rate of salary.</p> <p>For Plan 3 members, 50% of final rate of salary or a refund of the vested portion of their Plan 3 account balance.</p>

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

8. Non-Service Disability

Eligibility: Seven years of service, requires total and permanent disability for employment by the city in a position commensurate with the employee's training, experience, and education.

Amount: For Plan 1 members, 30% of Final Average Salary plus 1% of Final Average Salary times years of service in excess of 7 years. Maximum benefit is 50% of Final Average Salary.

For Plan 2 members, 25% of final rate of salary.

For Plan 3 members, 25% of final rate of salary, or a refund of the vested portion of their Plan 3 account balance.

9. Deferred Retirement Option Plan (DROP)

Eligibility: Member must be eligible to retire under early or normal retirement and elect to participate in DROP for up to five years.

Amount: Early or normal retirement benefit computed based on years of service and Final Average Salary as of the DROP election date. Benefit is paid into member's notional DROP account while the member remains actively employed. Post-Retirement Adjustments are applied to the monthly benefit paid into the notional DROP account. Interest at an annual rate of 5%, compounded monthly, is credited to the notional DROP account. Voluntary termination of employment during the DROP period results in loss of accrued interest. Member and employer contributions continue to be paid to the System while the member remains actively employed. Balance of DROP account is payable within 90 days of actual termination of employment. Benefit amount paid to the member after actual termination of employment includes Post-Retirement Adjustments as if the member had retired on the DROP election date.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

10. Spouse Pre-Retirement Death Benefits

Eligibility: None

Amount: For Plan 1 and 2 members:

If married with 7 or more years of service, 50% of the benefit the deceased member would have been entitled to had they been on an unreduced retirement at time of death. The spouse's benefit is payable immediately regardless of the deceased member's age.

If non-married or less than seven years of service, the deceased employees' accumulated contributions with interest, plus one month's salary for each full year of service up to a maximum of six months of salary.

For Plan 3 members:

The deceased employee's contributions, plus the vested portion of matching employer contributions, plus any investment gains and losses.

Death benefits are payable to members who have terminated employment.

11. Post-Retirement Death Benefits

Eligibility: For retirements prior to January 1, 2000, surviving spouse must have been married to retired employee at retirement.

For retirements on or after January 1, 2000, surviving spouse must have been married to retired employee for at least one year at time of death.

Minor children must be under the age of 18.

Amount: For surviving spouses, 50% of the amount that was being paid to the retiree.

For minor children with surviving spouses, 10% of the member's Final Average Salary for each child under age 18. Maximum benefit, including surviving spouse benefit, is 75% of Final Average Salary.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

For minor children without surviving spouses, 20% of member's Final Average Salary for each child under age 18. Maximum benefit is 60% of Final Average Salary.

If no survivor benefits are payable, any accumulated member contributions with interest in excess of benefit payments made is refunded to the member's beneficiary or estate.

12. Post-Retirement Funeral Benefits

Eligibility: Beneficiary must have been designated by the retiree.

Amount: For Plan 1 members, \$1,500.

Plan 2 members are not eligible for this benefit.

13. Other Termination Benefits

Eligibility: Termination of employment without eligibility for any other benefit.

Amount: For Plan 1 and 2 members, refund of accumulated member contributions with interest at 5% per year compounded monthly.

For Plan 3 members, refund of member contributions, plus the vested portion of matching employer contributions, plus any investment gains and losses.

14. Post-Retirement Adjustments (PRA)

Eligibility: For Plan 1 members and Plan 2 members who retired on or after January 1, 2000, completion of 12 months of retirement.

Plan 2 members who retired before January 1, 2000, are not eligible for this provision.

Amount: For Plan 1 members, 3% of the original base benefit (simple COLA).

For Plan 2 members, 2% of the original base benefit (simple COLA).

15. Member Contributions

Plan 1: 6.4% of total compensation.

Plan 2: 4.7% of base salary and longevity pay.

Plan 3: 4.7% of base salary and longevity pay.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX C – SUMMARY OF PLAN PROVISIONS

16. City Contributions

Actuarially determined amount which together with member contributions and investment earnings will fund the obligations of the System in accordance with generally accepted actuarial principles.

Plan 3: 4.7% of base salary and longevity pay, less forfeitures from non-vested terminations.

17. Vesting of Contributions

Plan 3: Member contributions and investment earnings thereon are 100% vested. City contributions and investment earnings thereon are 25% vested after three years of service, 50% vested after five years of service, and 100% vested after seven years of service.

18. Distribution of Vested Accounts

Plan 3: Vested accounts are payable upon termination of City employment or death. Available forms of payment are prescribed by the Board.

19. Unused Sick Leave

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

20. Section 415 limit

\$230,000, effective January 1, 2021.

21. Section 401(a)(17) limit

\$290,000, effective January 1, 2021.

22. Changes Since Last Valuation

None.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX D – GLOSSARY OF TERMS

1. Actuarial Assumptions

Assumptions as to the occurrence of future events affecting pension costs, such as: mortality, withdrawal, disability, and retirement; changes in compensation; inflation; rates of investment earnings, and asset appreciation or depreciation; and other relevant items.

2. Actuarial Cost Method

A procedure for determining the Actuarial Present Value of pension plan benefits and expenses and for developing an allocation of such value to each year of service, usually in the form of a normal cost and an Actuarial Liability.

3. Actuarial Gain/(Loss)

A measure of the difference between actual experience and that expected based upon a set of actuarial assumptions during the period between two actuarial valuation dates, as determined in accordance with a particular actuarial cost method.

4. Actuarial Liability

The portion of the Actuarial Present Value of projected benefits which will not be paid by future normal costs. It represents the value of the past normal costs with interest to the valuation date.

5. Actuarial Present Value (Present Value)

The value as of a given date of a future amount or series of payments. The Actuarial Present Value discounts the payments to the given date at the assumed investment return and includes the probability of the payment being made. As a simple example: assume you owe \$100 to a friend one year from now. Also, assume there is a 1% probability of your friend dying over the next year, in which case you will not be obligated to pay him. If the assumed investment return is 10%, the Actuarial Present Value is:

$$\begin{array}{ccccccc} \text{Amount} & & \text{Probability of} & & \text{1/(1+Investment Return)} & & \\ & & \text{Payment} & & & & \\ \$100 & \times & (1 - .01) & \times & 1/(1+.1) & = & \$90 \end{array}$$

6. Actuarial Valuation

The determination, as of a specified date, of the normal cost, Actuarial Liability, Actuarial Value of Assets, and related Actuarial Present Values for a pension plan.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX D – GLOSSARY OF TERMS

7. Actuarial Value of Assets

The value of cash, investments and other property belonging to a pension plan as used by the actuary for the purpose of an actuarial valuation. The purpose of an Actuarial Value of Assets is to smooth out fluctuations in market values. This way long-term costs are not distorted by short-term fluctuations in the market.

8. Actuarially Equivalent

Of equal Actuarial Present Value, determined as of a given date with each value based on the same set of actuarial assumptions.

9. Amortization Payment

The portion of the pension plan contribution which is designed to pay interest and principal on the Unfunded Actuarial Liability in order to pay for that liability in a given number of years.

10. Entry Age Normal Actuarial Cost Method

A method under which the Actuarial Present Value of the projected benefits of each individual included in an actuarial valuation is allocated on a level basis over the earnings of the individual between entry age and assumed exit ages.

11. Funded Ratio

The ratio of the Actuarial Value of Assets to the Actuarial Liabilities.

12. Investment Return Assumption

The assumed interest rate used for projecting dollar related values in the future.

13. Mortality Table

A set of percentages which estimate the probability of death at a particular point in time. Typically, the rates are annual and based on age and sex.

14. Normal Cost

That portion of the Actuarial Present Value of pension plan benefits and expenses, which is allocated to a valuation year by the actuarial cost method.

**WICHITA EMPLOYEES' RETIREMENT SYSTEM
DECEMBER 31, 2021 ACTUARIAL VALUATION REPORT**

APPENDIX D – GLOSSARY OF TERMS

15. Projected Benefits

Those pension plan benefit amounts which are expected to be paid in the future under a particular set of actuarial assumptions, taking into account such items as the effect of advancement in age and increases in future compensation and service credits.

16. Unfunded Actuarial Liability

The excess of the Actuarial Liability over the Actuarial Value of Assets.



Classic Values, Innovative Advice

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Funding for Kellogg and Eisenhower Airport Parkway Aesthetic Improvements (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the initial budget and adopt the resolution.

Background: On February 15, 2022, the City Council approved the sale of a remnant property at the southeast corner of the interchange of Kellogg and Eisenhower Parkway and allocated the money from the sale to be used for aesthetic improvements to the interchange.

Analysis: The proposed project scope will replace and enhance the existing railings around the interchange, restore rust stains and/or masonry coatings for piers and bridge concrete barriers. The project will also include light emitting diode (LED) lighting, landscaping and pavers, and repair concrete pavement where needed.

The initial design will include a scope of work that utilizes the funding from the property sale only.

Financial Considerations: Staff recommends initiating a budget of \$566,745 from the sale of the property at Kellogg and Eisenhower Parkway Interchange, to be utilized for design, project development and a portion of construction. Staff recommends the proposed 2023-2032 Capital Improvement Program include additional funding for construction.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the budget, adopt the resolution and authorize the necessary signatures.

Attachment: Resolution.

RESOLUTION NO. 22-114

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Kellogg and Eisenhower Airport Parkway Aesthetic Improvements (472-2022-085772)

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **\$566,745** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. Project Financing. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on April 19, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: 2022 Traffic Signalization (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the project and construction locations, adopt the resolution, and approve the budget.

Background: The Adopted 2022 -2031 Capital Improvement Program (CIP) includes an ongoing project to signalize major intersections and improve the traffic signals at existing signalized intersections.

Analysis: The 2022 Traffic Signalization Program will be used for design and construction of traffic signals at the following locations:

- Ridge and Village Circle
- 29th Street North and Greenwich Road
- MacArthur Road and Hoover Road

The Ridge and Village Circle signal is expected to be constructed in 2022. The other two signals are expected to be constructed in 2023. Remaining funds will be used for additional sites as requested by the public or identified by staff when warrants are met.

Financial Considerations: The Adopted 2022-2031 CIP includes \$750,000 in 2022 for Traffic Signalization. The funding source is General Obligation bonds. Staff is requesting that the budget be initiated at this time.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the budget, adopt the resolution and authorize the necessary signatures.

Attachment: Resolution.

RESOLUTION NO. 22-115

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

2022 Traffic Signalization Program (472-2022-085773).

(the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **\$750,000** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. Project Financing. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on April 19, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, City Attorney and Director of Law

**City of Wichita
City Council Meeting
April 19, 2022**

TO: Mayor and City Council

SUBJECT: Loan Agreement for the Northwest Water Facility Project (All Districts)

INITIATED BY: Department of Public Works and Utilities

AGENDA: New Business

Recommendation: Approve the loan agreement and authorize the required insurance payment.

Background: The Northwest Water Facility project will provide a 120 million gallons per day water treatment facility to replace the City’s aging water treatment plant. The two main financing sources are Water Infrastructure Finance and Innovation Act (WIFIA), offered by the Environmental Protection Agency, and loans through the State of Kansas Drinking Water State Revolving Fund (SRF), which is administered by the Kansas Department of Health and Environment (KDHE). The WIFIA Credit Agreement was approved by the City Council on April 14, 2020. The SRF financing is a series of loans, the first of which was approved by the City Council on November 3, 2020, in the amount of \$55,000,000.

Analysis: The SRF assistance will provide financing for approximately 48% of the project costs. The aggregate maximum amount available is \$267,342,000, including all capitalized interest.

The second loan amount is \$60,000,000 and the interest rate has been set at 1.34% which is estimated to save \$12 million compared to municipal bonds of a similar maturity in the current market. The first SRF loan was estimated to save \$11 million. The savings of each subsequent loan will be calculated as each new interest rate is determined.

The basic terms of the SRF Loan Agreement are provided in the table below.

Basic SRF Credit Terms	
Amount	<ul style="list-style-type: none"> • \$267,342,000 maximum aggregate principal (capitalized interest included) • November 2020 loan amount: \$55,000,000 • April 2022 loan amount: \$60,000,000
Interest Rates	<ul style="list-style-type: none"> • November 2020 loan agreement: 1.48% • April 2022 loan agreement: 1.34% • The interest rate for each subsequent loan will be determined on the effective date of each loan agreement in accordance with Kansas Administrative Regulations (KAR). The KAR currently calculates interest rates as a percentage of the Bond Buyer Index for similar maturities.
Repayment (all loans in the series)	<ul style="list-style-type: none"> • Begins: August 1, 2025, or one year after project completion (whichever comes first) • Ends: February 1, 2045 (assuming repayment begins August 1, 2025)
Service Fees	The gross interest rate and annual debt service payments include a portion for annual service fees. The total estimated cost of fees for the life of the April 2022 loan is approximately \$3.7 million.

The SRF loan is backed by municipal bond insurance provided by Build America Mutual. The quoted cost of the insurance is 0.25% of the total debt service amount of the loan. The estimated cost of

insurance for the April 2022 loan is \$162,339 and is due at closing. The insurance premium will be paid out of the approved Water Utility Fund operating budget.

Financial Considerations: The annual principal and interest payments estimated by the KDHE for the loan are in line with the City's previous projections. The cost of insurance for this loan is also within the City's previous projections. No changes to the future rate increases shared with the City Council on December 7, 2021, are expected as a result of this loan.

Legal Considerations: The Law Department has reviewed and approved the SRF Loan Agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the SRF Loan Agreement, authorize the required insurance payment to be paid out of the Water Utility Fund operating budget, and authorize the necessary signatures.

Attachment: SRF Loan Agreement No. 2.

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LOAN AGREEMENT

Between

**THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
ACTING ON BEHALF OF
THE STATE OF KANSAS**

and

CITY OF WICHITA, KANSAS

KPWSLF PROJECT NO. 2979.2

EFFECTIVE AS OF MARCH 1, 2022

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The interest of the Kansas Department of Health and Environment (“KDHE”) in the Loan Repayments to be made by the Municipality and certain other revenues (the “Revenues”) under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the “Authority”) pursuant to a Master Indenture. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium if any, and interest on the Authority's State Revolving Fund Revenue Bonds, pursuant to the Master Indenture.

LOAN AGREEMENT

Table of Contents

Recitals	1
 ARTICLE I DEFINITIONS	
Section 1.01 Definitions.....	2
Section 1.02 Rules of Interpretation	13
 ARTICLE II LOAN TERMS	
Section 2.01 Amount of the Loan	13
Section 2.02 Interest Rate	13
Section 2.03 Disbursement of Loan Proceeds	14
Section 2.04 Schedule of Compliance; Completion of Project.....	14
Section 2.05 Repayment of the Loan.....	15
Section 2.06 Additional Payments.....	15
Section 2.07 Additional Indebtedness.....	15
 ARTICLE III REPRESENTATIONS AND COVENANTS OF MUNICIPALITY	
Section 3.01 Representations of the Municipality	20
Section 3.02 Particular Covenants of the Municipality	22
 ARTICLE IV ASSIGNMENT	
Section 4.01 Assignment and transfer by KDHE	30
Section 4.02 Assignment by the Municipality	30
 ARTICLE V EVENTS OF DEFAULT AND REMEDIES	
Section 5.01 Notice of Default.....	30
Section 5.02 Remedies on Default.....	31
Section 5.03 Expenses	34
Section 5.04 Application of Moneys	34
Section 5.05 No Remedy Exclusive; Waiver; Notice	34
Section 5.06 Retention of-Rights	34
Section 5.07 Financial and Management-Review	35

ARTICLE VI MUNICIPAL BOND INSURANCE PROVISIONS

Section 6.01 Notice and Other Information to be given to BAM	35
Section 6.02 Consent of BAM	35
Section 6.03 Insolvency	36
Section 6.04 Control by BAM Upon Default	36
Section 6.05 BAM as Owner	36
Section 6.06 Consent of BAM for Acceleration	36
Section 6.07 Grace Period for Payment Defaults	36
Section 6.08 Special Provisions for Insurer Default	36
Section 6.09 BAM As Third Party Beneficiary	37
Section 6.10 Payment Procedure Under the Policy	37
Section 6.11 Reimbursement of BAM.....	38
Section 6.12 Exercise of Rights by BAM.....	39
Section 6.13 Payment upon Nonpayment by Municipality	39
Section 6.14 No Transfer	39
Section 6.15 No Impairment.....	39
Section 6.16 Additional Events of Default	39
Section 6.17 Definitions.....	39

ARTICLE VII MISCELLANEOUS

Section 7.01 Notices	40
Section 7.02 Binding Effect.....	41
Section 7.03 Severability	41
Section 7.04 Amendments, Supplements and Modifications.....	41
Section 7.05 Execution in Counterparts.....	41
Section 7.06 Governing Law and Regulations.....	41
Section 7.07 Consents and Approvals	41
Section 7.08 Further Assurances.....	41

Signatures and Seal.....	42
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Exhibit A - Description of the Project	
Exhibit B - Loan Repayment Schedule	
Exhibit C - Conditions Applicable to Construction of the Project	
Exhibit D - Use of Loan Proceeds	
Exhibit E - Instructions for Requesting Disbursements	
Exhibit F - Municipality Ordinance	
Exhibit G - Form of Opinion of Municipality's Counsel	
Exhibit H - Municipality's Notice Address	
Exhibit I – Form of Bond Insurance Policy	
Exhibit J - Form of Qualified User Certificate	

RECITALS

KANSAS PUBLIC WATER SUPPLY LOAN FUND LOAN AGREEMENT

THIS LOAN AGREEMENT, effective as of March 1, 2022, by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (“KDHE”), acting on behalf of THE STATE OF KANSAS (the “State”), and the City of Wichita, Kansas, a “Municipality” according to K.S.A. 65-163d (the “Municipality”);

W I T N E S S E T H:

WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking Water Act (jointly, the “Federal Act”) established the Drinking Water Loan Fund to assist public water supply systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the “EPA”) to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Public Water Supply Loan Act, K.S.A. 65-163d *et seq.*, as amended (the “Loan Act”), the State of Kansas (the “State”) has established the Kansas Public Water Supply Loan Fund (the “Revolving Fund”) for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary (the “Secretary”) of the Kansas Department of Health and Environment (“KDHE”) is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Secretary, Kansas Development Finance Authority (the “Authority”), and the Kansas Department of Administration (the “DOA”) have entered into an Inter-Agency Agreement dated as of September 28, 2009, (jointly, the “Inter-Agency Agreement”), to define the cooperative relationship between KDHE, the DOA and the Authority to jointly administer certain provisions of the Loan Act; and

WHEREAS, the Authority and KDHE have supplemented the Inter-Agency Agreement by entering into a Master Indenture, dated November 1, 1997, as the same may be amended and supplemented from time to time (the “Master Indenture”) pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities (as defined in the Loan Act) for Public Water Supply Projects and to pledge the Loan Repayments received pursuant to such Loan Agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the “KDFA Bonds”) for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, the Municipality has made timely application to KDHE for a Loan to finance all or a portion of the Project Costs; and

WHEREAS, the State has approved the Municipality's application for a Loan, subject to the receipt of capitalization grants from the EPA pursuant to the Federal Act and proceeds of the KDFA Bonds when issued by the Authority.

NOW, THEREFORE, in consideration of the award of the Loan by KDHE, the Municipality agrees to complete its Project (as defined herein) and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

“Additional Bonds” means Additional Parity Bonds and Subordinate Bonds; provided that any General Obligation Indebtedness shall not constitute Additional Parity Bonds.

“Additional Indebtedness” means Additional Parity Indebtedness and Subordinate Indebtedness.

“Additional Parity Bonds” means any bonds secured by the Net Revenues hereafter issued pursuant to the Bond Resolutions and standing on a parity and equality with the Loan with respect to the Lien on the Net Revenues.

“Additional Parity Indebtedness” means, collectively or individually, as the context requires, the Additional Parity Bonds and the Additional Parity Obligations.

“Additional Parity Obligations” means any leases, loans or other obligations, other than the Parity Bonds, of the Municipality hereafter issued or incurred, payable from the Net Revenues and standing on a parity and equality with the Parity Bonds and the Loan with respect to the Lien on the Net Revenues.

“Additional Payments” means the payments described in *Section 2.06* hereof.

“Authority” or “KDFA” means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

“Authorized Investments” means the investments hereinafter described, provided that no moneys or funds shall be invested in a Derivative:

- (a) investments authorized by the Kansas Statutes Annotated (“K.S.A.”) 12-1675 and amendments thereto;
- (b) the municipal investment pool established pursuant to K.S.A. 12-1677a and amendments thereto;
- (c) direct obligations of the Government;

(d) the Municipality's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto;

(e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Municipality is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in clause (c) of this definition;

(f) obligations of the federal national mortgage association, federal home loan banks, the federal home loan mortgage corporation or government national mortgage association;

(g) repurchase agreements for securities described in clauses (c) or (f) of this definition;

(h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's Investors Service or S&P Global Ratings, a division of S&P Global Inc.;

(i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (c) or (f) of this definition;

(j) receipts evidencing ownership interests in securities or portions thereof described in clauses (c) or (f) of this definition;

(k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101, and amendments thereto, which are general obligations of the municipality issuing the same;

(l) bonds of any municipality of the State as defined in K.S.A. 10-1101, and amendments thereto, which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in clauses (c) or (f) of this definition; or

(m) other investment obligations authorized by the laws of the State and approved in writing by the Insurer, all as may be further restricted or modified by amendments to applicable State law.

"Authorized Municipality Representative" means any person authorized pursuant to a resolution of the governing body of the Municipality to perform any act or execute any document relating to the Loan, or this Loan Agreement.

"Balloon Indebtedness" means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

"Bond Reserve Account" means the Water and Sewer Utility Bond Reserve Account established in the Treasury of the Municipality.

"Bond Reserve Requirement" means, collectively or individually, as the context requires, any bond reserve requirement for each series of Outstanding Parity Bonds and any bond reserve requirement for any subsequent series of Parity Bonds; provided that there shall be no bond reserve requirement for the

Loan and the KDHE shall have no Lien on the Bond Reserve Account or any bond reserve subaccount established in connection with the issuance of other Parity Indebtedness.

“Bond Resolutions” means, collectively, the Outstanding Parity Bond Resolutions, any supplemental resolution authorizing any Additional Indebtedness, including the WIFIA Bond Resolution, and any loan agreement or other evidence of indebtedness, including this Loan Agreement and any other loan agreement between KDHE and the Municipality relating to Additional Indebtedness.

“Bonds” means, collectively, the Outstanding Parity Bonds and any Additional Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and, to the extent applicable, U.S. Treasury Regulations promulgated thereunder.

“Conditions Applicable to Construction of the Project” shall have the meaning set forth on Exhibit C hereto.

“Contractual Obligation” means any contractual provision or any pledge issued or entered into by the Municipality or the Utility under any indenture, resolution, contract, agreement, instrument or other undertaking to which the Municipality or the Utility is a party or by which it or any of its property or assets is bound.

“Consultant” means the consulting engineer, the independent accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Municipality for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolutions.

“Continuing Disclosure Undertaking” means, with respect to any series of KDFA Bonds, the undertaking or agreement by KDHE and any other parties thereto with respect to continuing disclosure matters within the scope of the SEC Rule.

“Current Expenses” means, as applied to either component of the Utility, the Municipality’s reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Indebtedness, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Municipality or by improvement districts heretofore annexed by the Municipality to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Municipality under the provisions of the Bond Resolutions or by law. “Current Expenses” shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

“Debt Service Coverage Ratio” means, for any Municipal Fiscal Year: (a) with respect to the Rate Covenant, the ratio determined by dividing (i) a numerator equal to the Net Revenues for such Municipal Fiscal Year by (ii) a denominator equal to the Debt Service Requirements and/or the Payment to the City, as applicable, for such Municipal Fiscal Year; and (b) with respect to Additional Indebtedness, the ratio determined by dividing (i) a numerator equal to the average Net Revenues for the two (2) prior Municipal Fiscal Years by (ii) a denominator equal to the Maximum Annual Debt Service; provided that with respect to Additional Indebtedness that is proposed to be Parity Indebtedness, Debt Service Requirements with respect to Subordinate Obligations and General Obligation Indebtedness shall be disregarded.

“Debt Service Requirements” means, with respect to all or any Utility Indebtedness or General Obligation Indebtedness, as the context requires, the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on such Utility Indebtedness or General Obligation Indebtedness for the period of time for which calculated; provided that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

“Dedicated Source of Revenue” shall have the meaning ascribed thereto in *Section 3.02(a)* hereof.

“Depreciation and Replacement Account” means the Water and Sewer Utility Depreciation and Replacement Account established within the Treasury of the Municipality.

“Depreciation and Replacement Account Requirement” means an amount equal to fifteen percent (15%) of the Operating Revenues of the Utility for the preceding Municipal Fiscal Year.

“Derivative” means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

“Director of Finance” means the duly appointed and acting Director of Finance of the Municipality or, in the Director’s absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Municipality.

“Discount Indebtedness” means Long-Term Indebtedness that is originally sold at a price excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

“Effective Date” means the date on which the Kansas Public Water Supply Loan Fund application process has been completed and KDHE sets the Gross Interest Rate in accordance with K.A.R. 28-15-52(b).

“EPA” means the Environmental Protection Agency of the United States, its successors and assigns.

“Event of Default” means any occurrence of the following events:

(a) Failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due.

(b) Failure by the Municipality to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by KDHE, unless KDHE shall agree in writing to an extension of such time prior to its expiration. If the failure stated in such notice is correctable but cannot be corrected within the applicable period KDHE may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above, if corrective action is instituted by the Municipality within the applicable period and diligently pursued until such failure is corrected.

(c) Failure by the KDHE to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement which shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to KDHE by the Municipality, unless the Municipality shall agree in writing to an extension of such time prior to its expiration. If the failure stated in such notice is correctable but cannot be corrected within the applicable period the Municipality may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by KDHE within the applicable period and diligently pursued until such failure is corrected.

(d) The discovery that any representation made by or on behalf of the Municipality in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect.

(e) The discovery that any representation made by or on behalf of KDHE in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement, is false or misleading in any material respect.

(f) The filing of a petition by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality, such petition is dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal.

(g) Failure of KDHE to promptly pay any Project Costs when reasonably requested to do so by the Municipality pursuant to *Section 2.03* hereof.

(h) Any Event of Default under any Utility Indebtedness of the Municipality.

“Federal Act” means the Safe Drinking Water Act, including the Safe Drinking Water Act Amendments of 1996 [PL 104-182] thereto.

“Flow of Funds” shall have the meaning set forth in *Section 3.02(c)* of this Loan Agreement.

“Funds and Accounts” means funds and accounts created pursuant to or referred to in the Bond Resolutions.

“GAAP” means generally accepted accounting principles as applicable to municipal utility systems.

“General Obligation Indebtedness” means any of the Municipality’s general obligation bonds issued for improvements to the Utility.

“Green Project Reserve” means the requirement from Public Law 111-88 indicating that to the extent there are sufficient eligible project applications, 20% of the funds awarded to the KPWSLF from Public Law 111-88 shall be used by for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

“Gross Interest Rate” means an interest rate of 1.34% per annum, which includes a net loan interest rate and a service fee as described in *Exhibit B*.

“Gross Revenues” means all income and revenues derived and collected by the Municipality from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

“Independent Accountant” means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Municipality for the purpose of carrying out the duties imposed on the Independent Accountant by the Bond Resolutions.

“Index Rate” means the rate of interest set forth in *The Bond Buyer* Revenue Bond Index or, in the event that *The Bond Buyer* does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

“Initiation of Operations” means the ability to start operations of the Project, which may be coterminous with the substantial completion of the Project.

“Interim Indebtedness” means Utility Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

“Insurer” means Build America Mutual Assurance Company, a New York domiciled mutual insurance corporation, or any successor thereto.

“KDFA Bonds” means the Kansas Development Finance Authority, Kansas Public Water Supply Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 106, and supplements thereto, or such other authorization, resolution, indenture, instrument or security agreement deemed appropriate by KDFA and KDHE.

“KDHE” means the Kansas Department of Health and Environment or its successors in interest.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Loan” means the loan made by KDHE to the Municipality to finance or refinance a portion of the Project Costs pursuant to this Loan Agreement.

“Loan Act” means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-163d through 65-163u inclusive, as amended and supplemented.

“Loan Agreement” means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Repayments” means the payments payable by the Municipality pursuant to *Section 2.05* of this Loan Agreement.

“Loan Terms” means the terms of this Loan Agreement provided in *Article II* hereof.

“Long-Term Indebtedness” means Utility Indebtedness having an original Stated Maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

“Maturity” means, when used with respect to any Utility Indebtedness, the date on which the principal of such Utility Indebtedness becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

“Maximum Annual Debt Service” means the maximum amount of Debt Service Requirements as computed for the then current or any future Municipal Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Utility Indebtedness shall be reduced by the value of cash and Authorized Investments on deposit in the subaccount of the Bond Reserve Account applicable to such series, so long as such subaccount for such Utility Indebtedness is maintained at the Bond Reserve Requirement.

“Municipal Bond Insurance Policy” means the Municipal Bond Insurance Policy issued by the Insurer insuring the payment, when due, of the Loan Repayments, as provided therein.

“Municipal Fiscal Year” means the twelve-month period ending on December 31 of each year.

“Municipality” means the City of Wichita, Kansas.

“Master Indenture” means the Master Indenture between the Authority and KDHE, dated as of November 1, 2010, and any agreement or agreements amendatory or supplemental thereto.

“Net Revenues” or “Net Revenues Available for Debt Service” means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; provided that such amount shall exclude Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

“Operating Revenues” means the Gross Revenues, less investment income and less Current Expenses.

“Ordinance” means the ordinance adopted by the governing body of the Municipality authorizing the Municipality to enter into and perform the Loan and Loan Agreement.

“Outstanding” means, when used with reference to any Utility Indebtedness, as of a particular date of determination, all Utility Indebtedness theretofore, authenticated and delivered, except the following Utility Indebtedness:

(a) Utility Indebtedness theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolutions;

(b) Utility Indebtedness deemed to be paid in accordance with the provisions of the Bond Resolutions;

(c) Utility Indebtedness in exchange for or in lieu of which other Utility Indebtedness has been authenticated and delivered under the Bond Resolutions; and

(d) Utility Indebtedness, the principal or interest of which has been paid by the Insurer.

“Outstanding Parity Bond Resolutions” means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds, as the same may be amended and supplemented from time to time.

“Outstanding Parity Bonds” means the bonds of the Municipality that have been issued or incurred prior to the Loan Effective Date and standing on a parity and equality with the Loan with respect to the Lien on the Net Revenues, including but not limited to the WIFIA Bond.

“Outstanding Parity Indebtedness” means, collectively or individually, as the context requires, the Outstanding Parity Bonds and the Outstanding Parity Obligations.

“Outstanding Parity Obligations” means the leases or other obligations, other than the Parity Bonds, of the Municipality that have been issued or incurred prior to the Loan Effective Date, payable from the Net Revenues and standing on a parity and equality with the Parity Bonds with respect to the Lien on the Net Revenues, including but not limited to the WIFIA Credit Agreement.

“Owner” means, when used with respect to any Utility Indebtedness, the Person in whose name such Utility Indebtedness is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of the Bond Resolutions, and the Owner of the Utility Indebtedness, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Utility Indebtedness. For the avoidance of doubt, KDHE is the Owner of the Loan.

“Parity Bonds” means the Outstanding Parity Bonds and any Additional Parity Bonds.

“Parity Indebtedness” means, collectively or individually, as the context requires, the Parity Bonds and the Parity Obligations.

“Parity Obligations” means the Outstanding Parity Obligations, the Loan and any Additional Parity Obligations.

“Paying Agent” means (a) with respect to the Outstanding Parity Bonds other than the WIFIA Bond, the State Treasurer, and its successors and assigns; (b) with respect to the WIFIA Bond, Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns; and (c) with respect to Additional Indebtedness, the entity designated as Paying Agent in the ordinance or resolution authorizing such Additional Indebtedness.

“Payment Date” means each date on which principal or interest is due on any Utility Indebtedness.

“Payment to the City” means the payment to the Municipality’s general fund as a payment for operation of the Utility, the amount of which shall be governed by the terms of such ordinances of the Municipality which are then in effect with respect to the then outstanding Utility Indebtedness.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any governmental entity.

“Policy” means the means the Insurer’s policy of insurance insuring the Loan Repayments.

“Pre-2014 Bonds” means, collectively, the Municipality’s Water and Sewer Utility Refunding Revenue Bonds, Series 2011 A, dated November 17, 2011.

“Principal and Interest Account” means the Water and Sewer Principal and Interest Account established within the treasury of the Municipality.

“Project” means the acquisition, design, construction, improvement, repair, rehabilitation or extension of the System described in *Exhibit A* hereto, which constitutes a project pursuant to the Loan Act for which KDHE is making a Loan to the Municipality pursuant to this Loan Agreement.

“Project completion” or **“completion of the Project”** for purposes of this Loan Agreement means the completion of construction of the Project.

“Project Costs” means all costs or expenses which are necessary or incident to the Project and which are directly attributable thereto, including, but not limited to: (a) interest on the Loan during the construction of the Project; (b) principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs incurred for contracts entered into on or after August 6, 1996; and (c) financing and administrative costs associated with the Loan Agreement.

“Public Water Supply System” means a system for the provision to the public of piped water for human consumption, if such system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, and as further defined in K.S.A. 65-162a, and amendments thereto.

“Put Indebtedness” means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under the Bond Resolutions.

“Regulations” means Kansas Administrative Regulations (K.A.R.) 28-15-50 to 28-15-65, inclusive, and any amendments thereto promulgated by KDHE pursuant to the Act.

“Revenue Fund” means the Water and Sewer Utility Revenue Fund established within the treasury of the Municipality.

“Revolving Fund” means the Kansas Public Water Supply Loan Fund established by the Loan Act.

“SEC Rule” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

“Secretary” means the Secretary of KDHE.

“Sewer Utility” shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

“Short-Term Indebtedness” means Utility Indebtedness having an original Maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

“State” means the State of Kansas, acting, unless otherwise specifically indicated, by and through KDHE, and its successors and assigns.

“Stated Maturity” means, when used with respect to any Utility Indebtedness or any installment of interest thereon, the date specified in such Utility Indebtedness and the Bond Resolutions or Ordinance as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

“Subordinate Bonds” means any bonds secured by the Net Revenues hereafter issued on a subordinate lien basis to any Parity Bonds.

“Subordinate Indebtedness” means, collectively or individually, as the context requires, the Subordinate Bonds and Subordinate Obligations.

“Subordinate Obligations” means any leases or other obligations, other than the Subordinate Bonds, of the Municipality hereafter issued or incurred, payable from the Net Revenues and secured by a lien on the Net Revenues, which lien is junior to that of any Parity Obligations.

“Uncontrollable Force” means any cause beyond the control of the Municipality, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, pandemic, or act of God (provided that the Municipality shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Municipality and the Municipality does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Municipality.

“Utility” means the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

“Utility Indebtedness” means, collectively or individually, as the context requires, the Parity Indebtedness and the Subordinate Indebtedness.

“**Value**” means, for purposes of the Bond Resolutions, the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or in *The New York Times*, the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Municipality in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest.

“**Variable Rate Indebtedness**” means any Utility Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Utility Indebtedness.

“**Water Utility**” or “**System**” shall mean and include the waterworks system now owned and operated by the Municipality and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired, including the Project described in *Exhibit A*, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Public Water Supply System.

“**WIFIA**” means the Water Infrastructure Finance and Innovation Act as enacted by the Congress of the United States of America and as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time), which is codified as 33 U.S.C. §§ 3901-3914.

“**WIFIA Bond**” means the Municipality’s not to exceed \$331,000,000 principal amount Taxable Water and Sewer Utility Revenue Bond, Series 2020B (WIFIA) issued and delivered by the Municipality to WIFIA.

“**WIFIA Bond Resolution**” means Ordinance No. 51-211 and Resolution No. 20-096, each adopted by the governing body of the Municipality on April 21, 2020, as amended and supplemented from time to time, authorizing the Municipality to issue bonds and receive credit pursuant to WIFIA.

“**WIFIA Credit Agreement**” means the WIFIA Credit Agreement dated April 23, 2020 between the EPA and the Municipality for up to \$280,860,714 to finance a portion of the cost of the Project.

Section 1.02. Rules of Interpretation.

- (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.
- (c) All references in this Loan Agreement to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Loan Agreement as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.
- (d) The Table of Contents and the Article and Section headings of this Loan Agreement shall not be treated as a part of this Loan Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

LOAN TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of KDFA Bonds, KDHE will loan an amount not to exceed \$60,000,000.00 to the Municipality to pay for a portion of the Project Costs for the Project described in **Exhibit A** hereto. KDHE has previously executed a loan for not to exceed \$55,000,000 for the Project and currently anticipates that it will execute up to 3 additional loans for the Project up to an aggregate total loan amount of \$267,342,000; provided that each additional loan will be subject to the terms, provisions and conditions of its applicable loan agreement and subject to the availability of State and Federal funds and available proceeds of KDFA Bonds. The additional loans will be executed as funds are needed but not more frequently than one per calendar year. Terms for additional loans may be different from terms in this Loan Agreement, including but not limited to the interest rate applicable to the additional loan and repayment terms and conditions established and determined in accordance with KDHE policies, the Loan Act and the Regulations, all as set out in the applicable loan agreement. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (**Exhibit B** hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in excess of the amount of the Loan. An amendment to **Exhibit B** must be accomplished by written amendment to the Loan Agreement executed by all parties.

Section 2.02. Interest Rate. The Gross Interest Rate on the loan shall be 1.34% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, **Exhibit B** hereto. This Gross Interest Rate consists of a net loan interest rate and a service fee as described in **Exhibit B**. Any subsequent revision to the amount of the Loan or **Exhibit B** hereto shall not change the Gross Interest Rate on the Loan. The interest rate for additional loans will be determined by K.A.R 28-15-52 based on the effective date of each additional loan.

Section 2.03. Disbursement of Loan Proceeds.

(a) Subject to the conditions described in this Section, KDHE agrees to disburse the proceeds of the Loan during the progress of the Project. Requests for disbursement may be submitted by the Municipality (in substantially the form attached hereto as *Exhibit E*), not more than once per month, in accordance with the procedures set forth by KDHE. Any request for disbursement must be supported by proper invoices and a certificate of the Authorized Municipality Representative to the effect that all representations made in this Loan Agreement remain true as of the date of the request and, based upon that information then available to such person, no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred.

The Municipality may request disbursement for Project Costs, including:

(1) any eligible planning/design costs incurred prior to execution of this Loan Agreement (initial disbursement request only);

(2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request);

(3) interest becoming due on the Loan prior to the initial scheduled payment of principal;

(b) KDHE shall not be under any obligation to disburse any Loan proceeds to the Municipality under this Loan Agreement unless:

(1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;

(2) the Municipality shall have funds available to pay for that portion of the Project Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement;

(3) no Event of Default by the Municipality shall have occurred and be continuing; and

(4) in KDHE's reasonable discretion, the Municipality continues to maintain reasonable progress towards completion of the Project.

Section 2.04. Schedule of Compliance; Completion of Project.

(a) The Municipality agrees to complete the Project in accordance with the Conditions Applicable to Construction of the Project set forth on *Exhibit C* attached hereto.

(b) The completion of the construction of the Project shall be evidenced to KDHE by a certificate signed by the Authorized Municipality Representative stating: (1) that the construction of the Project has been completed in accordance with the plans and specifications therefore; and (2) that all Project Costs have been paid, except Project Costs the payment of which is not yet due or is being retained or contested in good faith by the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 2.05. Repayment of the Loan.

(a) ***Loan Repayments.*** The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest at the Gross Interest Rate on the Loan in accordance with ***Exhibit B*** attached hereto (the “Loan Repayments”), until the Loan has been paid in full. Nothing in this Loan Agreement shall prevent the Municipality from making a Loan Repayment (including interest at the Gross Interest Rate) prior to the due date of such Loan Repayment. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on ***Exhibit B*** as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made on the day that is one year after Project completion or August 1, 2025, whichever comes first. Except for the first payment, Loan Repayments will be due semiannually in February and August. The final installment of principal under the Loan shall be fully repaid not later than 21 years after Project completion or February 1, 2045, whichever comes first.

(b) ***Prepayment of the Loan.*** The Municipality may not prepay the outstanding principal of the Loan, except as may be consented in writing by KDHE in advance of such prepayment, which consent, if any, shall be at the sole discretion of KDHE. The municipality must provide a written request to KDHE of its desire to prepay, such request shall indicate the actual source of funds that will be used to make the prepayment (specifically proceeds from a tax exempt bond issue, proceeds from a taxable bond issue, cash on hand, or some other instrument) and the desired date of prepayment. KDHE may require the prepayment date coincide with a scheduled repayment date of the Loan. A partial prepayment may be made only if the prepayment amount is equal to or greater than the greater of 10% of the original principal amount of the Loan or \$50,000. A new ***Exhibit B*** will be prepared by KDHE following receipt of any acceptable partial prepayment, reamortizing the remaining principal amount over the remaining term of the Loan.

Section 2.06. Additional Payments. The Municipality shall pay as Additional Payments the following amounts:

(a) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Indenture are insufficient to make such payments; and

(b) All other payments of whatever nature which the Municipality has agreed to pay or assume hereunder.

Section 2.07. Additional Indebtedness. The Municipality shall not create, incur or suffer to exist any Additional Indebtedness, Utility Indebtedness or other obligations the payments of which are senior or prior in right to (A) the payment by the Municipality of the Loan and the other Parity Indebtedness or (B) the Lien on the Net Revenues in favor of the Loan.

(a) **Issuance of Additional Parity Indebtedness.**

(1) The Municipality shall not issue any Additional Parity Indebtedness unless the following conditions are met:

(A) the Municipality shall not be in default in the payment of the Debt Service Requirements on any Parity Indebtedness then Outstanding or in making any payment at

the time required to be made into the Funds and Accounts unless such Additional Parity Indebtedness is being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing;

(B) the Municipality shall have delivered the following:

(i) for issuance of any Long-Term Indebtedness, a certificate signed by the Municipality evidencing that the Debt Service Coverage Ratio on all Parity Indebtedness for the two (2) Municipality Fiscal Years immediately preceding the issuance of such Additional Parity Indebtedness, as reflected by information provided by the Independent Accountant, shall be not less than 1.20, including such Additional Parity Indebtedness proposed to be issued. In the event that the Municipality has instituted any increase in rates for the use and services of the Utility and such increase shall not have been in effect during the full two (2) Municipality Fiscal Years immediately preceding the issuance of such proposed Additional Parity Indebtedness, the additional Net Revenues which would have resulted from the operation of the Utility during such two (2) preceding Municipality Fiscal Years had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Debt Service Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant;

(ii) for issuance of any Short-Term Indebtedness, a certificate signed by the Municipality evidencing any one of the following: (1) the principal amount of all Outstanding Short-Term Indebtedness does not exceed fifteen percent (15%) of the Gross Revenues for the most recently ended Municipality Fiscal Year for which financial information is available from the Independent Accountant; (2) the Short-Term Indebtedness could be incurred assuming it was Long-Term Indebtedness; or (3) the Municipality has received a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Municipality will be able to refinance such Short-Term Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Short-Term Indebtedness when it is assumed that such Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Short-Term Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement); and

(iii) for issuance of any Interim Indebtedness, a certificate signed by the Municipality evidencing either of the following: (1) the Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness or (2) the Municipality has received a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Municipality will be able to refinance such Interim Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Interim Indebtedness when it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Interim Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual

debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement);

(C) the issuance of Additional Parity Indebtedness is permitted by the laws of the State;

(D) with respect to the issuance of Additional Parity Bonds, an additional deposit to the Bond Reserve Account shall be made to bring the Bond Reserve Account to an amount equal to the Bond Reserve Requirement: and

(E) the ordinance and/or resolution authorizing such Additional Parity Indebtedness shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in the Bond Resolutions.

(F) The Secretary may waive any or all or any part of the conditions in (A), (B), (D) and (E) above by written waiver delivered to the Municipality preceding issuance of the Additional Indebtedness. The Municipality will not issue any Utility Indebtedness as Parity Obligations pursuant to this *subsection 2.07(a)(1)* unless each of the foregoing conditions in (A) through (E) is first satisfied or waived by the Secretary.

(2) The Municipality shall have the right, without complying with the provisions of the foregoing terms and conditions of the issuance of Additional Parity Indebtedness to issue Additional Parity Indebtedness, for the purpose of refunding any Parity Indebtedness then Outstanding, and such Additional Parity Indebtedness so issued shall enjoy complete equality of pledge as did the Parity Indebtedness that was refunded.

(3) Additional Parity Indebtedness shall stand on a parity with other Parity Indebtedness and shall enjoy complete equality or lien on and claim against the Net Revenues, and the Municipality may make equal provision for paying the Debt Service Requirements on such Additional Parity Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable debt service accounts and debt service reserve accounts for the payment of the Debt Service Requirements on such Additional Parity Indebtedness and the interest thereon out of moneys in the Revenue Fund.

(b) Issuance of Subordinate Indebtedness. The Municipality shall have the right to issue Subordinate Indebtedness for any lawful purpose related to the operation of and benefiting the Utility and to provide that the Debt Service Requirements on such Subordinate Indebtedness shall be payable out of the Net Revenues, provided that, at the time of the issuance of such Subordinate Indebtedness, the Municipality shall not be in default in the performance of any covenant or agreement contained in the Bond Resolutions (unless such Subordinate Indebtedness shall be issued to cure such default and shall be junior and subordinate to the Parity Indebtedness) so that if at any time the Municipality shall be in default in paying either interest on or principal of the Parity Indebtedness, or the Municipality is in default in payment of Current Expenses, Debt Service Requirements on Parity Indebtedness or transfers required by the Bond Resolutions prior to the payment of Debt Service Requirements on Subordinate Indebtedness; the Municipality shall make no payments of Debt Service Requirements on such Subordinate Indebtedness until such default is cured.

(c) Calculation of Debt Service Requirements.

(1) *Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness.*

(A) The principal of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under this *Section 2.07*, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, that at the election of the Municipality for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal deemed payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under this *Section 2.07*, or Interim Indebtedness, shall be deemed to be payable as set forth below:

(i) If the Municipality has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(ii) If the Municipality has entered into a binding agreement providing for the deposit by the Municipality with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in trust herein called a “Special Redemption Fund”) of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, when due from the sums so deposited and investment earnings realized thereon, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(iii) If the Municipality has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in *subsections (i) and (ii)* above, which a Consultant in a certificate filed with the Municipality determines, taking into account the interests of the Owners of Utility Indebtedness, provides adequate assurances that the Municipality will be able to meet the Debt Service Requirements due on such Indebtedness, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(iv) Such Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Utility Indebtedness which, at the date of its original incurrence, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate.

A Consultant shall deliver to the Municipality a certificate stating that it is reasonable to assume that installment obligations of such term of the Municipality can be incurred and stating the interest rate then applicable to installment obligations of such term of comparable quality. Interim Indebtedness may be deemed to be Indebtedness which, at the date of its original incurrence, would meet the conditions specified in the statement of the Consultant as required in this *Section 2.07*; provided that the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that at such period, the certifications contained in the statement are reasonable.

(B) Interest that is payable prior to the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall be taken into account for such appropriate period in computation of Debt Service Requirements. Interest payable at maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or such longer period as is permitted under *Section 2.07* or *Section 2.07(c)(A)(iv)* or may be treated as principal payable on the principal maturity date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(C) In measuring compliance with the applicable tests hereunder in connection with incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements relating thereto, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the Municipality has a commitment to refinance such Put Indebtedness.

(2) *Debt Service Requirements on Discount Indebtedness.* At the election of the Municipality for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal and interest deemed payable on Discount Indebtedness shall be deemed to be payable as set forth below:

(A) If the Municipality has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof; including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(B) If the Municipality has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in trust (herein called a “Special Redemption Fund”) of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited, and investment earnings realized thereon, then the Discount Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(C) If the Municipality has entered into arrangements or agreements with respect to the principal amount of such Discount Indebtedness, other than those referred to

in *subsections (A) and (B)* above, which a Consultant in a certificate filed with the Municipality determines, taking into account the interests of the holders of Utility Indebtedness, provides adequate assurances that the Municipality will be able to meet the Debt Service Requirements due on such Indebtedness, the Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(D) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Indebtedness computed on the basis of a constant yield to maturity.

(3) *Debt Service Requirements on Variable Rate Indebtedness.* When calculating interest requirements on Variable Rate Indebtedness which bears a variable rate of interest for periods as to which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, as evidenced in a certificate of a Consultant, delivered to the Municipality.

ARTICLE III

REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

Section 3.01. Representations of the Municipality. The Municipality represents as follows:

(a) *Organization and Authority.*

(1) The Municipality is a body corporate and politic duly created and validly existing under and pursuant to the constitution and statutes of the State.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its Utility, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted and have not been repealed or modified.

(4) This Loan Agreement has been duly authorized, executed and delivered on behalf of the Municipality, and, constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) *Full Disclosure.* To the best knowledge of the Authorized Municipality Representative signing this Loan Agreement, after due investigation, there is no fact that the Municipality has not disclosed to KDHE in writing on the Municipality's application for the Loan, or otherwise, that materially adversely affects, or that will materially adversely affect, its properties, activities, the Utility, Gross Revenues, or

ability to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) ***Non-Litigation.*** Other than claims challenging the Municipality's charter, legislative authorities and police powers that lack any reasonable merit, there is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the collection of revenues of the Utility; or (5) the imposition and collection of rates, fees and charges for use of the Utility; which if decided adversely to the Municipality could materially and adversely affect the transactions contemplated hereby or the validity or enforceability of the Loan or this Loan Agreement. There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legality of any official act taken in connection with obtaining the Loan; (2) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (3) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (4) the pledging of Net Revenues to pay the principal of and interest on the Loan; or (5) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) ***Compliance with Existing Laws and Agreements.*** To the best knowledge of the Municipality, the authorization, execution and delivery of this Loan Agreement by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements thereunder will not result in any breach of any existing law, any Outstanding Utility Indebtedness, or any other agreement to which the Municipality is a party.

(e) ***No Defaults.*** To the knowledge of the Municipality, no event has occurred and no condition exists that would constitute an Event of Default under this Loan Agreement or any Outstanding Utility Indebtedness. There is presently no material default under any resolution, Outstanding Utility Indebtedness, or agreement which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(f) ***Compliance with Law.*** The Municipality has, to the best of the Authorized Municipality Representative's knowledge:

(1) complied with all laws, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Loan Act, the Regulations and the Federal Act, the failure to comply with which would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

(2) obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership and operation of its System which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the System.

(g) ***Use of Loan Proceeds.*** The Municipality will apply the proceeds of the Loan as described in ***Exhibit D***: (1) to finance or refinance a portion of the Project Costs; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs paid or incurred in anticipation of reimbursement by KDHE as a result of contracts entered into on or after August 6, 1996 and eligible for such reimbursement pursuant to the Regulations and the Code. The Municipality understands that all or a

portion of the proceeds of the Loan may be funded with proceeds of KDFA Bonds, the interest on which is intended to be exempt from Federal income tax under the Code (“Tax-Exempt Bonds”). The Municipality agrees that it will not use, or permit any Person to use, any portion of the proceeds of the Loan or the facilities financed with the proceeds of the Loan (the “Financed Facility”) in a manner that could cause interest on any of the Tax-Exempt Bonds to become subject to income tax under the Code. The Municipality agrees to comply with the requirements set forth in the Qualified User Certificate attached as *Exhibit J* hereto, as such may be modified or amended from time to time by KDHE to maintain compliance with the Code for any Tax-Exempt Bonds, with respect to the use of the Financed Facilities, and to provide to KDHE confirmation of such compliance as from time to time requested by KDHE. Each request by the Municipality for disbursement of Project Costs pursuant to this Loan Agreement shall be deemed a representation that the portion of the Financed Facilities funded thereby is in compliance with the requirements set forth in the Qualified User Certificate attached as *Exhibit J* hereto.

(h) **Project Costs.** The Municipality certifies that the statement of sources of funds and Project Costs, as listed in *Exhibit D*, is a reasonable and accurate estimation based on facts known to the Authorized Municipal Representative and, upon direction of KDHE, it will supply the same with a certificate from its consulting engineer stating that such sources of funds and Project Costs are reasonable and accurate estimations, taking into account investment income to be realized during the estimated course of construction of the Project, if any, and other lawfully available money that would, absent the Loan, have been used to pay the Project Costs.

(i) **Parity Obligations.** The Municipality certifies that the Loan is a Parity Obligation as defined in the WIFIA Credit Agreement and is a Parity Obligation as defined in the Outstanding Parity Bond Resolutions. The Municipality hereby represents and covenants that the Loan granted by this Loan Agreement is so granted in full compliance with the restrictions and conditions upon which the Municipality may issue Additional Obligations which stand on a parity of lien with the Net Revenues with the Parity Indebtedness heretofore issued and Outstanding, as set forth and contained in the Outstanding Parity Bond Resolution, and that the Loan herein directed to be granted is so issued in all respects on a parity and equality with the Parity Indebtedness heretofore issued and Outstanding. In case any one or more of the provisions of this Loan Agreement or of the Loan granted hereunder shall for any reason be inconsistent with the provisions of the Outstanding Parity Bond Resolutions or the Parity Indebtedness: (a) the provisions of any Outstanding Parity Bond Resolution adopted prior to this Loan Agreement shall prevail with respect to Parity Indebtedness issued prior in time, so long as such Parity Indebtedness is Outstanding; and (b) the provisions of this Loan Agreement shall prevail with respect to any Parity Bond Resolution adopted subsequent to this Loan Agreement, so long as any Parity Indebtedness issued under this Loan Agreement is Outstanding.

Section 3.02. Particular Covenants of the Municipality.

(a) **Dedicated Source of Revenue for Repayment of the Loan.** (i) The Municipality hereby adopts the Net Revenues as the Dedicated Source of Revenue; which Dedicated Source of Revenue is hereby pledged to and as security for the Loan Repayments, Additional Payments and all other obligations under the Loan Agreement. The Loan shall be a special obligation of the Municipality payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the Municipality hereby pledges said Net Revenues to the payment of the principal and interest on the Loan. The Loan shall not be or constitute a general obligation of the Municipality and the taxing power of the Municipality is not pledged to the payment of the Loan, either as to principal or interest.

(ii) The obligation of the Municipality to make Loan Repayments is secured by the Municipal Bond Insurance Policy issued in favor of KDHE but obtained by and at the cost of the Municipality. The Municipality has obtained a commitment from Build America Mutual Assurance Company to provide the

Municipal Bond Insurance Policy herein referenced. The cost of the policy can be included in the principal component of the Loan.

(b) ***Rate Covenant.*** The Municipality, in accordance with and subject to applicable law, shall fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Utility as will produce Gross Revenues sufficient to: (A) pay the Current Expenses; (B) pay the Debt Service Requirements on the Utility Indebtedness as and when the same become due at the Maturity thereof or on any interest payment date; (C) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility as provided in the Bond Resolutions; and (D) enable the Municipality to have in each Municipal Fiscal Year, a Debt Service Coverage Ratio of not less than (1) 1.20 on all Parity Indebtedness at the time Outstanding; (2) 1.00 on all Subordinate Indebtedness at the time Outstanding; (3) 1.00 on all General Obligation Indebtedness at the time Outstanding; and (4) 1.00 with respect to the Payment to the City; provided that, in determining the Net Revenues for purposes of the calculation of the Debt Service Coverage Ratio, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable Municipal Fiscal Year, as determined by the Consultant, may be taken into account, and that, without giving effect to any such adjustments from rate increases, the Debt Service Coverage Ratio shall be not less than 1.00 of the current Municipal Fiscal Year's Debt Service Requirements for all Utility Indebtedness.

The Municipality shall, from time to time as often as necessary, in accordance with and subject to applicable law, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues will be sufficient to cover the obligations under the provisions of the Bond Resolutions. If in any Municipal Fiscal Year, Net Revenues are an amount less than as provided in the foregoing provisions of this section, the Municipality will make adjustments to such rates, fees and charges to bring the Utility into compliance with this covenant. It shall be the policy of the Municipality that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues with respect to Utility Indebtedness issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

(c) ***Application of Gross Revenues; Funds and Accounts.*** The Municipality's Gross Revenues shall be deposited into the Revenue Fund and applied in the following order of priority (the "Flow of Funds"):

first, to pay the cost of Current Expenses currently as bills accrue. Such amount as may be necessary in the opinion of the governing body of the Municipality to pay the reasonable and proper Current Expenses for the next succeeding sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other funds and accounts;

second, to transfer on the first day of each month to the Principal and Interest Account, for credit to the respective subaccounts thereof, a proportionate amount necessary to meet on each Payment Date the payment of all interest on and principal of the Parity Indebtedness. All amounts transferred and credited to the various Principal and Interest subaccounts shall be expended and used by the Municipality for the sole purpose of paying the Debt Service Requirements of respective Parity Indebtedness as and when the same become due at Maturity and on each Payment Date. If at any time the moneys in the Revenue Fund are insufficient to make in full the transfers at the time required to be made to the Principal and Interest Account and to the subaccounts established to pay the principal of and interest on any Parity Indebtedness, the available moneys in the Revenue Fund shall be divided among such debt service accounts in proportion to the respective principal or interest amounts, as applicable, of such Parity Indebtedness at the time Outstanding which are payable from the moneys in such Principal and Interest subaccounts;

third, to transfer monthly to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement. Except as hereinafter provided, all amounts transferred and credited to the Bond Reserve Account shall be expended and used by the Municipality solely to prevent any default in the payment of interest on or principal of the Parity Bonds on any Maturity date or Payment Date if the moneys in the respective Principal and Interest subaccounts are insufficient to pay the Debt Service Requirements of such Parity Bonds as they become due. So long as the moneys in the Bond Reserve Account aggregate the Bond Reserve Requirement, no further transfers to such account shall be required, but if the Municipality is ever required to expend and use a part of the moneys in any subaccount for the purpose herein authorized and such expenditure reduces the amount of the moneys in such subaccount below the Bond Reserve Requirement for such subaccount, or if the Value of any such subaccount is below the Bond Reserve Requirement for such subaccount, the Municipality shall make monthly payments into such subaccount so that the moneys in such subaccount shall again aggregate the Bond Reserve Requirement for such subaccount within twelve (12) months of such deficiency;

fourth, to transfer monthly to the debt service account(s) for any Subordinate Indebtedness, to the extent necessary to meet on each Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Indebtedness. The amounts required to be transferred and credited to the debt service account(s) for any Subordinate Indebtedness shall be made at the same time and on a parity with the amounts at the time required to be transferred and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Indebtedness;

fifth, to transfer monthly to the Depreciation and Replacement Account minimum monthly amounts so that the moneys in the Depreciation and Replacement Account will equal the Depreciation and Replacement Account Requirement within a period of thirty (30) months from the date of the first such transfer. Except as hereinafter provided, moneys in the Depreciation and Replacement Account shall be expended and used by the Municipality for the purpose of: (A) making extraordinary maintenance and repairs to the Utility, (B) making capital improvements in and to the Utility, and (C) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay Current Expenses. After the moneys in the Depreciation and Replacement Account aggregate the Depreciation and Replacement Account Requirement, no further transfers to the Depreciation and Replacement Account shall be required, but if the Municipality is ever required to expend a part of the moneys in the Depreciation and Replacement Account for its authorized purposes and such expenditure reduces the amount of the moneys in the Depreciation and Replacement Account below the Depreciation and Replacement Requirement, then the Municipality shall resume and continue to transfer minimum monthly amounts to the Depreciation and Replacement Account so that the moneys in such account aggregate the Depreciation and Replacement Requirement within a period of eighteen (18) months of such deficiency;

sixth, to transfer monthly to such funds or accounts of the Municipality determined by the Director of Finance of the Municipality, proportionate monthly amounts equal to the Debt Service Requirements on General Obligation Indebtedness accruing in the next twelve (12) months;

seventh, to transfer monthly to such funds or accounts of the Municipality determined by the Director of Finance of the Municipality, proportionate amounts equal to the next required Payment to the City; and

eighth, to transfer all moneys in the Revenue Fund on each January 1 not required for payment of the Current Expenses and all transfers required by first through seventh hereof for the next ninety (90) days to the Improvement Account. When the Pre-2014 Bonds are no longer

Outstanding, transfers from the Revenue Fund to the Improvement Fund may be made on a monthly basis in such amounts as may be determined by the Director of Finance. Moneys in the Improvement Account may be expended and used for the following purposes:

- (1) Paying the Current Expenses.
- (2) Paying the cost of extending, enlarging or improving the Utility.
- (3) Preventing default in, making payments into or increasing the amounts in any of the Funds and Accounts or other payments required by *subsections (a) to(g)* hereof
- (4) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Municipality, purchasing in the open market at fair market value, any Utility Indebtedness or General Obligation Indebtedness.
- (5) Any other lawful purpose in connection with the operation of the Utility and benefiting the Utility.
- (6) To make transfers to the Revenue Fund.

(d) ***Performance Under Loan Agreement.*** The Municipality covenants and agrees in the performance of its obligations under this Loan Agreement:

- (1) to comply with all applicable State and federal laws, rules and regulations (including, but not limited to those rules and conditions set forth in ***Exhibit C*** hereto as are applicable to this Loan Agreement); and
- (2) to reasonably cooperate with KDHE in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and KDHE under this Loan Agreement and the Regulations, including, without limitation the requirements contained in ***Exhibit C*** hereto.

(e) ***Completion of Project and Provision of Moneys Therefor.*** The Municipality covenants and agrees:

- (1) to exercise its commercially reasonable efforts in accordance with prudent water treatment utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in ***Exhibit C*** hereto; provided such completion date shall be extended for the period of any Uncontrollable Force; and
- (2) to provide from its own financial resources all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(f) ***Delivery of Documents.*** Concurrently with the delivery of this Loan Agreement and the closing of the Loan, the Municipality will cause to be delivered to KDHE:

- (1) fully executed counterparts of this Loan Agreement;
- (2) copies of the ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, a copy of which is attached hereto as ***Exhibit F***;

(3) an opinion of the Municipality's counsel substantially in the form set forth in ***Exhibit G*** attached hereto;

(4) a certificate of the Municipality substantially in the form set forth in ***Exhibit J*** attached hereto;

(5) a fully executed UCC Financing Statement or other security filing instrument, if applicable;

(6) the Municipal Bond Insurance Policy of the Insurer in substantially the form attached hereto as a part of ***Exhibit I***, the statement of insurance; and

(7) such other certificates, documents, opinions and information as KDHE may reasonably require.

(g) ***Operation and Maintenance of System.*** The Municipality covenants and agrees that it shall, in accordance with prudent public water supply utility practice:

(1) at all times operate its System in an efficient manner in accordance with applicable laws and regulations; and

(2) maintain its System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its system in good repair, working order and operating condition; and

(3) implement and collect any rates, fees and charges for use of the System that comprise the Dedicated Source of Revenues, including charges levied for use of the System adopted by the Secretary, after consultation with the governing body of the Municipality, to ensure repayment of all Parity Indebtedness (including the Loan) without preference in accordance with the provisions of the Loan Act, including Section 65-163j thereof; and

(4) take such other action as the Secretary may require in accordance with express powers granted to the Secretary under the Loan Act and the Regulations.

(h) ***Disposition of System.*** The Municipality shall not sell, lease or otherwise transfer ownership of all or substantially all of its System without the consent of the Secretary and compliance with restrictions upon the same under the Bond Resolutions. The Municipality shall provide the Secretary with ninety (90) days' prior written notice to KDHE of such sale, lease or transfer. No such sale, lease or transfer shall be effective unless compliance is with the provisions of *Section 4.02* hereof, assuming such sale, lease or transfer is deemed to be an assignment for the purposes of such Section. Subject to compliance with the Bond Resolutions, the Municipality may enter into a lease of a portion of the System in conjunction with a lease-purchase transaction to finance improvements to the System; provided that such lease-purchase transaction is deemed to be an Additional Indebtedness and further provided that a termination or an event of default by the Municipality under such arrangement shall not have a material adverse effect on the Municipality's Dedicated Source of Revenues.

(i) ***Creation of Liens; Adverse Amendments.***

(1) The Municipality will neither create, nor permit the creation of, any lien, encumbrance or charge upon its Utility or upon the Gross Revenues except the pledge, lien and charge securing its obligations under this Loan Agreement, any Outstanding Utility Indebtedness,

any Additional Indebtedness issued as Parity Obligations, or any pledge, lien or charge created to secure any junior lien Revenue Obligation issue by the Municipality, as long as the rights of the owners of such obligations are subordinate in all respects to the covenants and provisions of this Loan Agreement and such lien, encumbrance or charge further complies with the Bond Resolutions. The Municipality further covenants that it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after the same accrue, all lawful claims and demands for labor, materials, supplies or other obligations constituting operating expenses of its Utility which, if unpaid, might by law become a lien upon the Utility or upon the Gross Revenues. Nothing in this paragraph shall require the Municipality to pay or cause to be discharged, or to make provisions for payment of, any such lien, encumbrance or charge so long as the validity thereof is contested in good faith and by appropriate legal proceedings. If the Municipality proposes to issue any Utility Indebtedness or otherwise create a pledge of, or lien upon, its Gross Revenues, the Utility, or any part thereof, written notice of such proposed issuance or lien shall be given to KDHE and the Authority.

(2) The Municipality shall not, and shall not permit any Person to, without the prior written consent of KDHE, (i) extinguish or impair the Lien on the Net Revenues granted pursuant to this Loan Agreement, (ii) amend, modify, replace or supplement the Ordinance or permit a waiver of any provision thereof, (iii) amend, modify, replace or supplement any related document or permit a waiver of any provision thereof in a manner that could adversely affect KDHE or (iv) subject to *Section 3.02(r)* (Particular Covenants of the Municipality – Additional Rights), provide any counterparty to a Contractual Obligation the right to accelerate any Utility Indebtedness or other obligations.

(j) ***Annual Budget.*** Prior to the commencement of each Municipal Fiscal Year, the Municipality will cause to be prepared and filed with the Secretary a budget setting forth its estimated Gross Revenues and operating expenses for the next succeeding Municipal Fiscal Year. A copy of such budget will be furnished by the Secretary to the Authority. The budget must be prepared in accordance with the requirements of the laws of the State and shall contain all information that is required by such laws.

(k) ***Records and Accounts.***

(1) The Municipality shall keep accurate records and accounts for its Utility (the “Utility Records”), separate and distinct from its other records and accounts (the “General Accounts”). Such Utility Records shall be audited annually by an independent certified public accountant or firm of independent certified public accountants, in accordance with generally accepted auditing standards, if municipal aggregate annual gross receipts are in excess of \$275,000 or if the municipality has outstanding debt in excess of \$275,000. Such audit may be a part of the single agency audit made in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, ***Audits of States, Local Governments, and Non-profit Organizations*** as amended in 1996 and 2003 and as may be further amended and revised. Such Utility Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 210 days of the close of the Municipal Fiscal Year being so audited. Such audit report shall be prepared in accordance with *subsection (k)(2)* hereof.

(2) The Municipality shall maintain financial information in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association. The financial information shall be prepared in accordance with generally accepted accounting principles (GAAP) for state and local governments.

(l) **Inspections.** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, with reasonable prior notice, the property, constituting the Project and/or the Utility, and to inspect and make copies of any accounts, financial books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith. In addition, not less than every three (3) years, the Municipality will cause its consulting engineer to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report shall be filed with the Secretary within a reasonable time after the inspection is completed.

(m) **Obligation to Provide Information if Notified by KDHE.** The Municipality agrees to provide to KDHE such annual financial information and operating data, together with ongoing notice of the occurrence of any "material event" (defined below), each with respect to the Municipality, as is necessary for KDHE to comply with each Continuing Disclosure Undertaking from time to time in effect. Such information, data and notices pursuant to this section will be required to be provided by the Municipality upon notice from KDHE that the Municipality is a Principal Participating Municipality (which is a borrower for which information and notices are required to be filed pursuant to a Continuing Disclosure Undertaking), as defined in a Continuing Disclosure Undertaking.

(1) **Timing.** Any such financial information and operating data shall be provided by the Municipality to KDHE as soon as practicable after it is available, and any such notice of a material event shall be provided by the Municipality to KDHE promptly following the occurrence of the event, no later than 7 business days after the occurrence of the event. Existing Continuing Disclosure Undertakings require that any such financial information and operating data shall be filed by KDHE within 270 days after the end of the Municipal Fiscal Year, as defined in a Continuing Disclosure Undertaking, and that any such notice of a material event be filed by KDHE within 10 business days of the occurrence of the material event. The timing of such requirements may be different in a future Continuing Disclosure Undertaking, and a request by KDHE to the Municipality pursuant to this section may require that such information be provided to KDHE a reasonable period in advance of the filing dates required by a Continuing Disclosure Undertaking.

(2) **Annual Information.** Any such financial information shall be accompanied by an audit report prepared in accordance with the provisions of *subsection (g)(2)* hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law, in which case it shall be prepared on such other basis of accounting that demonstrates compliance with State law. Such requirement for financial information and operating data may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its Utility (if Gross Revenues are included in the dedicated source of repayment), unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, unaudited financial information shall be provided to KDHE pending receipt of the audit report. If the method of preparation and the basis of accounting is changed to a basis less comprehensive than previously described, the Municipality shall provide a specific notice of such change to KDHE when the financial information is provided.

(3) **Event Notices.** For purposes of this section, “material event” shall mean any event with respect to the Municipality (if it is a Principal Participating Municipality) required to be reported by KDHE pursuant to a Continuing Disclosure Undertaking. Upon a determination by KDHE that the Municipality is a Principal Participating Municipality, KDHE will provide instructions to the Municipality identifying such events then required to be reported, and the Municipality agrees to report such events to the extent required by a Continuing Disclosure Undertaking. The existing Continuing Disclosure Undertakings require reporting by a Principal Participating Municipality of four events, relating generally to (i) bankruptcy or insolvency, (ii) merger, consolidation or acquisition, (iii) incurrence of a financial obligation or debt and (iv) default, acceleration, termination or modification of a financial obligation or debt.

(n) **Insurance.** The Municipality will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by similar municipal operators of public water supply systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, or other similar future law (currently \$500,000 per occurrence). The Municipality shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any entity that has contract of which costs will be reimbursed with funds from this loan), other than workers’ compensation insurance, to reflect the Kansas Department of Health and Environment as an additional insured to the extent of its insurable interest. In lieu of the foregoing, the Municipality may establish a self-insurance program which will provide substantially the same protection for KDHE.

(o) **Notice of Material Adverse Change.** The Municipality shall promptly notify KDHE and the Insurer of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Utility, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(p) **Additional Covenants and Requirements.** The parties hereto acknowledge that this Loan Agreement may be assigned or pledged to secure KDFA Bonds or other financings of the Authority. Should it be necessary to modify any covenants, the parties agree to take all reasonable actions and make reasonable covenants and agreements necessary to accomplish such purpose to the extent permitted by applicable laws and all Bond Resolutions. The parties hereto acknowledge that in conjunction with the issuance of or providing security for any KDFA Bonds or other financings, KDHE reserves the right to obtain municipal bond insurance or any other form of credit enhancement with respect to this Loan Agreement. The Municipality acknowledges that the decision to obtain any such municipal bond insurance or other credit enhancement shall be at the sole discretion of KDHE and the Authority. The costs of obtaining such credit enhancement and related costs shall be borne by the Revolving Fund. The Municipality shall cooperate with KDHE, the Authority and any provider of such credit enhancement with respect to furnishing financial information required by *subsections (k) and (m)* of this section, or any other relevant information or operating data of the Utility reasonably necessary to obtain such credit enhancement or comply with the provisions thereof on an ongoing basis so long as this Loan Agreement is in effect.

(q) **Parity Obligations.** The Municipality agrees that it will not take any action that would result in the Loan no longer remaining at least a Parity Obligation as defined in the WIFIA Credit Agreement and a Parity Obligation as defined in the Parity Bond Resolutions.

(r) **Additional Rights.** In the event that the Municipality shall, directly or indirectly, enter into, consent to, or otherwise grant any Contractual Obligation, which provides any counterparty to such Contractual Obligation with rights to accelerate any Utility Indebtedness or other obligations (the

“Additional Rights”), then such Additional Rights shall automatically be deemed to be incorporated into this Loan Agreement and KDHE shall have the benefit of such Additional Rights including the right to accelerate the Loan pursuant to *Section 5.02(a)* of this Loan Agreement. The Municipality shall promptly, upon entering into or otherwise consenting to a Contractual Obligation containing such Additional Rights, notify KDHE of such Contractual Obligation and enter into an amendment to this Loan Agreement to incorporate such Additional Rights herein; provided that KDHE shall have the benefit of such Additional Rights even if the Municipality fails to provide such notice or enter into an amendment hereto to incorporate such Additional Rights into this Loan Agreement. As of the Effective Date and as of the date of the execution of this Loan Agreement, the Municipality does not have Contractual Obligations that contain Additional Rights.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by KDHE. The Municipality hereby approves and consents to any assignment or transfer of this Loan Agreement that KDHE deems necessary in connection with the operation and administration of the Revolving Fund. The Municipality hereby specifically approves the assignment and pledging of the Loan Repayments to the Authority, and the Authority’s pledging of all or a portion of the same to the KDFA Bonds.

Section 4.02. Assignment by the Municipality. This Loan Agreement may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

- (a) KDHE, the Insurer, and the Authority shall have approved the assignment in writing;
- (b) the assignee is a city, county, township, water district, improvement district or other political subdivision of the State of Kansas or any combination thereof;
- (c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;
- (d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations under its Master Indenture nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on any KDFA Bonds; and
- (e) the Municipality shall provide KDHE and the Insurer with an opinion of a qualified attorney that each of the conditions set forth in subparagraphs (b), (c), and (d) hereof have been met.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Notice of Default. If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice

shall be immediately followed by written notice of such Event of Default given in the manner set forth in *Section 7.01* hereof.

Section 5.02. Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, KDHE, the Insurer or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements and cancellation of the Loan Agreement (subject to consent of the Insurer as provided in *Article VI*)), or such other remedies provided to the Secretary in the Loan Act and the Regulations; provided that:

(1) the remedies for any Event of Default resulting solely from noncompliance by the Municipality with *Section 3.02(m)* (Particular Covenants of the Municipality - Obligation to Provide Information if Notified by KDHE) of this Loan Agreement shall be limited to such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Municipality to comply with its obligations under such section; and

(2) subject to the limitation in clause (1) of this subsection, if KDHE has a right to accelerate the Loan pursuant to *Section 3.02(r)* (Particular Covenants of the Municipality – Additional Rights) of this Loan Agreement, KDHE may declare the outstanding balance of the Loan to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Loan Agreement, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(b) The parties hereto acknowledge that the Bond Resolutions and all of the provisions thereof shall constitute a contract between the Municipality, the Bond Insurer, if any, and each of the Owners of Utility Indebtedness incurred under the applicable Bond Resolution, and any such Owner may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by the applicable Bond Resolutions, subject to the limitations set forth in the applicable Bond Resolutions; provided however, that no Owner of Subordinate Indebtedness shall have the ability to impair the rights of Owners of Parity Indebtedness. Upon the happening and continuance of any Event of Default under a Bond Resolution, then and in every such case any Owner of Utility Indebtedness issued under such Bond Resolution may proceed, subject to the provisions of the applicable Bond Resolution, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of any covenant or agreement contained therein or in aid or execution of any power therein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

(c) The parties further acknowledge that anything in the Bond Resolutions to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Utility Indebtedness as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(1) If the principal of all the Parity Indebtedness shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Indebtedness which shall have become due and payable (other than Parity Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolutions), in the order of their due dates, with interest on the principal amount of such Parity Indebtedness at the respective rates specified therein from the respective dates upon which such Parity Indebtedness' became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Parity Indebtedness, to the purchase and retirement of the Parity Indebtedness and to the redemption of the Parity Indebtedness, all in accordance with the provisions of the Bond Resolutions.

(2) If the principal of all of the Parity Indebtedness shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness, and then to the payment of any interest due and payable after maturity on the Parity Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness; and

second: to the payment of the principal of the Parity Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Parity Indebtedness over any other Parity Indebtedness.

(3) If the principal of all the Subordinate Indebtedness shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons

entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Indebtedness which shall have become due and payable (other than Subordinate Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Subordinate Indebtedness at the respective rates specified therein from the respective dates upon which such Subordinate Indebtedness' became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Subordinate Indebtedness, to the purchase and retirement of the Subordinate Indebtedness and to the redemption of the Subordinate Indebtedness, all in accordance with the provisions of the Bond Resolution.

(4) If the principal of all of the Subordinate Indebtedness shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably', according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness, and then to the payment of any interest due and payable after maturity on the Subordinate Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness; and

second: to the payment of the principal of the Subordinate Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Subordinate Indebtedness over any other Subordinate Indebtedness.

(d) In case any proceeding taken by any Owner on account of any default under this Loan Agreement shall have been discontinued or abandoned for any reason, then and in every such case the Municipality and the Owner shall be restored to its former position and rights under this Loan Agreement, respectively, and all rights and remedies of the Owner shall continue as though no such proceedings had been taken. No Owner of any of any Utility Indebtedness shall have any right in any manner whatever to affect, disturb or prejudice the security of this Loan Agreement or to enforce any right under this Loan Agreement, except in any manner herein provided, and all proceedings at law or in equity, other than those available to KDHE (but not other Owners) pursuant to the Loan Act, the Regulations or this Loan Agreement, shall be instituted, had and maintained for the equal benefit of all Owners of the same class of Parity Indebtedness. No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement and under the Loan Act or now or hereafter existing

at law or in equity or by statute. No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Owners may be exercised from time to time and as often as may be deemed expedient.

Section 5.03. Expenses.

(a) Upon the occurrence of an Event of Default on the part of the Municipality, and to the extent permitted by law, the Municipality shall, on demand, pay to KDHE the reasonable fees and expenses incurred by KDHE in the collection of Loan Repayments or any other sum in addition to Loan Repayments due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Municipality contained herein. Prior to incurring any such expenses, KDHE shall provide written notice to the Municipality that it intends to incur such expenses; provided, however, a failure by KDHE to give such notice shall not affect KDHE's right to receive payment for such expenses. Upon request by the Municipality, KDHE shall provide copies of statements evidencing the fees and expenses for which KDHE is requesting payment.

(b) Upon the occurrence of an Event of Default on the part of KDHE, and to the extent permitted by law and availability of appropriated funds by the Kansas Legislature, KDHE shall, on demand, pay to the Municipality the reasonable fees and expenses incurred by the Municipality in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of KDHE contained herein. Prior to incurring any such expenses, the Municipality shall provide written notice to KDHE that it intends to incur such expenses; provided, however, a failure by the Municipality to give such notice shall not affect the Municipality's right to receive payment for such expenses. Upon request by KDHE, the Municipality shall provide copies of statements evidencing the fees and expenses for which the Municipality is requesting payment.

Section 5.04. Application of Moneys. Any moneys collected by KDHE pursuant to *Section 5.03* hereof shall be applied (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to *Section 5.03* hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that KDHE's right to receive Loan Repayments is on a parity of lien basis with the lien of Utility Indebtedness on the Municipality's Gross Revenues, such moneys shall be applied to the Loan as a Parity Obligation under the Bond Resolutions as described in *Section 5.02(c)* hereof.

Section 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, no delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties hereto to exercise any remedy reserved to them in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this *Article V*.

Section 5.06. Retention of Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its

discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

Section 5.07. Financial and Management Review. As provided in the Loan Act and the Regulations, upon failure of the Municipality to pay one or more installments of the Loan Repayments in a timely manner, or in the event that the Secretary deems it advisable or necessary, the Secretary, after consultation with the governing body of the Municipality, may require the Municipality to undergo a financial and management operations review. The governing body shall correct any deficiencies noted during such review and collect charges or surcharges as may be adopted by the Secretary during the term of this Loan Agreement.

ARTICLE VI

MUNICIPAL BOND INSURANCE PROVISIONS

Section 6.01. Notice and Other Information to be given to BAM. The Municipality will provide BAM with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Undertaking for the 2020A Bonds even if such bonds are no longer outstanding and (ii) to KDHE under the Security Documents. All financial information described in *Section 3.02(m)* required to be delivered by the Municipality to KDHE shall also be delivered to BAM at the times described in *Section 3.02(m)*.

The notice address of BAM is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. _____, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com. In each case in which notice or other communication refers to an event of default or a claim on the Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate “URGENT MATERIAL ENCLOSED.”

Section 6.02. Consent of BAM. BAM’s prior written consent is required for all amendments and supplements to the Security Documents, with the exceptions noted below. The Municipality shall send copies of any such amendments or supplements to BAM and the rating agencies which have assigned a rating to the Insured Obligations, if any.

(a) ***Amendments or Supplements to Security Documents.*** Any amendments or supplements to the Security Documents shall require the prior written consent of BAM with the exception of amendments or supplements:

(1) To cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in the Security Documents or in any supplement thereto, or

(2) To grant or confer upon KDHE any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the holders of the Insured Obligations, or

(3) To add to the conditions, limitations and restrictions on the issuance of Additional Indebtedness under the provisions of the Security Documents other conditions, limitations and restrictions thereafter to be observed, or

(4) To add to the covenants and agreements of the Municipality in the Security Documents other covenants and agreements thereafter to be observed by the Municipality or to surrender any right or power therein reserved to or conferred upon the Municipality, or

(5) To issue additional Parity Indebtedness in accordance with the requirements set forth in the Security Documents (unless otherwise specified herein).

(b) **Consent of BAM in Addition to KDHE Consent.** Any amendment, supplement, modification to, or waiver of, any of the Security Documents that requires the consent of KDHE or adversely affects the rights or interests of BAM shall be subject to the prior written consent of BAM.

Section 6.03. Insolvency. Any reorganization or liquidation plan with respect to the Municipality must be acceptable to BAM. KDHE hereby appoints BAM as its agent and attorney-in-fact with respect to the Insured Obligations and agrees that BAM may at any time during the continuation of any proceeding by or against the Municipality under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (1) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (2) the direction of any appeal of any order relating to any Claim, (3) the posting of any surety, supersedeas or performance bond pending any such appeal, and (4) the right to vote to accept or reject any plan of adjustment. In addition, KDHE delegates and assigns to BAM, to the fullest extent permitted by law, the rights of KDHE with respect to the Insured Obligations in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

Section 6.04. Control by BAM Upon Default. Anything in the Security Documents to the contrary notwithstanding, upon the occurrence and continuance of a default or an event of default, BAM shall be entitled to control and direct the enforcement of all rights and remedies granted to KDHE under any Security Document. No default or event of default may be waived without BAM’s written consent.

Section 6.05. BAM as Owner. Upon the occurrence and continuance of a default or an event of default, BAM shall be deemed to be the sole owner of the Insured Obligations for all purposes under the Security Documents, including, without limitations, for purposes of exercising remedies and approving amendments.

Section 6.06. Consent of BAM for Acceleration. BAM’s prior written consent is required as a condition precedent to and in all instances of acceleration.

Section 6.07. Grace Period for Payment Defaults. No grace period shall be permitted for payment defaults on the Insured Obligations. No grace period for a covenant default shall exceed 30 days without the prior written consent of BAM.

Section 6.08. Special Provisions for Insurer Default. If an Insurer Default shall occur and be continuing, then, notwithstanding anything in *Section 6.02* through *Section 6.05* above to the contrary, (1) if at any time prior to or following an Insurer Default, BAM has made payment under the Policy, to the extent of such payment BAM shall be treated like any other holder of the Insured Obligations for all purposes, including giving of consents, and (2) if BAM has not made any payment under the Policy, BAM shall have no further consent rights until the particular Insurer Default is no longer continuing or BAM makes a payment under the Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, “Insurer Default” means: (A) BAM has failed to make any payment under the Policy when due and owing in accordance with its terms; or (B) BAM shall (i) voluntarily commence any proceeding or file

any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding described in (i), (ii) or (iii), (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of BAM (including without limitation under the New York Insurance Law).

Section 6.09. BAM As Third Party Beneficiary. BAM is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

Section 6.10. Payment Procedure Under the Policy.

(a) In the event that principal and/or interest due on the Insured Obligations shall be paid by BAM pursuant to the Policy, the Insured Obligations shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Municipality, the assignment and pledge of the Dedicated Source of Revenue and all covenants, agreements and other obligations of the Municipality to KDHE shall continue to exist and shall run to the benefit of BAM, and BAM shall be subrogated to the rights of KDHE with respect to such Insured Obligations.

(b) In the event that KDHE has not received sufficient moneys to pay all principal of and interest on the Insured Obligations due on any payment date, KDHE shall immediately notify BAM or its designee on such payment date by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part following the payment date, KDHE shall so notify BAM or its designee.

(c) In addition, if KDHE has been required to disgorge payments of principal of or interest on the Insured Obligations pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then KDHE shall notify BAM or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of BAM.

(d) The Municipality consents to the following, and KDHE shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for subsequent holders of the Insured Obligations:

(1) If there is a deficiency in amounts required to pay interest and/or principal on the Insured Obligations, KDHE shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for KDHE as holder (or attorney-in-fact for subsequent holders) of the Insured Obligations, in any legal proceeding related to the payment and assignment to BAM of the claims for interest on the Insured Obligations, (ii) receive as holder of the Insured Obligations (or attorney-in-fact for subsequent holders), in accordance with the tenor of the Policy payment from BAM with respect to the claims for interest so assigned, (iii) segregate all such payments in a separate account (the "BAM Policy Payment Account") to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to pay Insured Obligations; and

(2) If there is a deficiency in amounts required to pay principal of the Insured Obligations, KDHE shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for KDHE as holder (or attorney-in-fact for subsequent holders) of the Insured Obligations, in any legal proceeding related to the payment of such principal and an assignment to BAM of the Insured Obligations surrendered to BAM, (ii) receive as holder of the Insured Obligations (or attorney-in-fact for subsequent holders), in accordance with the tenor of the Policy payment therefore from BAM, (iii) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to pay Insured Obligations.

(3) KDHE shall designate any portion of payment of principal on Insured Obligations paid by BAM, whether when due or upon prepayment, on its books as a reduction in the principal amount of Insured Obligations and shall prepare a new Exhibit B (Loan Repayment Schedule) reflecting such payment by BAM; provided that KDHE's failure to so designate any payment or prepare a new Exhibit B shall have no effect on the amount of principal or interest payable by the Municipality on any Insured Obligation or the subrogation or assignment rights of BAM.

(e) Payments with respect to claims for interest on and principal of Insured Obligations disbursed by KDHE from proceeds of the Policy shall not be considered to discharge the obligation of the Municipality with respect to such Insured Obligations, and BAM shall become the owner of such unpaid Insured Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. The Security Documents shall not be discharged or terminated unless all amounts due or to become due to BAM have been paid in full or duly provided for.

(f) Irrespective of whether any such assignment is executed and delivered, the Municipality and KDHE agree for the benefit of BAM that:

(1) They recognize that to the extent BAM makes payments directly or indirectly (*e.g.*, by paying through a paying agent or trustee), on account of principal of or interest on the Insured Obligations, BAM will be subrogated to the rights of KDHE to receive the amount of such principal and interest from the Municipality, with interest thereon, as provided and solely from the sources stated in the Security Documents and the Insured Obligations; and

(2) The Municipality will accordingly pay to BAM the amount of such principal and interest, with interest thereon as provided in the Loan Agreement and the Insured Obligations, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Insured Obligations to KDHE, and will otherwise treat BAM as the owner of such rights to the amount of such principal and interest.

Section 6.11. Reimbursement of BAM.

(a) The Municipality agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of the Security Documents ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the

time of employees of BAM spent in connection with the actions described in the preceding sentence. The Municipality agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

(b) Notwithstanding anything herein to the contrary, the Municipality agrees to pay to BAM (i) a sum equal to the total of all amounts paid by BAM under the Policy ("BAM Policy Payment"); and (ii) interest on such BAM Policy Payments from the date paid by BAM until payment thereof in full by the Municipality, payable to BAM at the Late Payment Rate per annum (collectively, "BAM Reimbursement Amounts") compounded semi-annually. Notwithstanding anything to the contrary, including without limitation the post default application of revenue provisions, BAM Reimbursement Amounts and Administrative Costs shall be, and the Municipality hereby covenants and agrees that the BAM Reimbursement Amounts and Administrative Costs are, solely payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Insured Obligations under the Loan Agreement on a parity with debt service due on the Insured Obligations under the Loan Agreement.

Section 6.12. Exercise of Rights by BAM. The rights granted to BAM under the Security Documents to request, consent to or direct any action are rights granted to BAM in consideration of its issuance of the Policy. Any exercise by BAM of such rights is merely an exercise of the BAM's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of KDHE and such action does not evidence any position of BAM, affirmative or negative, as to whether the consent of KDHE or any other person is required in addition to the consent of BAM.

Section 6.13. Payment upon Nonpayment by Municipality. BAM shall be entitled to pay principal or interest on the Insured Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Municipality (as such terms are defined in the Policy) and any amounts due on the Insured Obligations as a result of acceleration of the maturity thereof in accordance with the Security Documents, whether or not BAM has received a claim upon the Policy.

Section 6.14. No Transfer. So long as the Insured Obligations are outstanding or any amounts are due and payable to BAM, the Municipality shall not sell, lease, transfer, encumber or otherwise dispose of the Utility or any material portion thereof, except upon obtaining the prior written consent of BAM.

Section 6.15. No Impairment. No contract shall be entered into or any action taken by which the rights of BAM or security for or source of payment of the Insured Obligations may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of BAM.

Section 6.16. Additional Events of Default. If an event of default occurs under any agreement pursuant to which any Obligation of the Municipality has been incurred or issued and that permits the holder of such Obligation or trustee to accelerate the Obligation or otherwise exercise rights or remedies that are adverse to the interest of the holders of the Insured Obligations or BAM, as BAM may determine in its sole discretion, then an event of default shall be deemed to have occurred under this Loan Agreement and the related Security Documents for which BAM or KDHE, at the direction of BAM, shall be entitled to exercise all available remedies under the Security Documents, at law and in equity. For purposes of the foregoing "Obligation" shall mean any bonds, loans, certificates, installment or lease payments or similar obligations that are payable and/or secured on a parity or subordinate basis to the Insured Obligations.

Section 6.17. Definitions. Terms used in this *Article VI* and not otherwise defined herein shall have the following meanings. For the avoidance of confusion, it is understood and agreed that the Insured

Obligations bear interest at the Gross Interest Rate and that references in this *Article VI* to the payment of interest on the Insured Obligations are references to payment of interest at such Gross Interest Rate.

“BAM” shall mean Build America Mutual Assurance Company, or any successor thereto.

“Insured Obligations” shall mean the Loan.

“Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in The City of New York, New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 5%, and (ii) the then applicable highest rate of interest on the Insured Obligations and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates including K.S.A. 10-1009. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as BAM, in its sole and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to BAM shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

“Policy” shall mean the Municipal Bond Insurance Policy as defined in *Section 1.01* of this Loan Agreement.

“Security Documents” shall mean the Municipality’s Ordinance, this Loan Agreement and/or any additional or supplemental document executed in connection with the Insured Obligations.

“2020A Bonds” shall mean the Municipality’s Water and Sewer Utility Revenue Bonds, Series 2020A.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in *subsection (b)*, to the parties hereinafter set forth at the following addresses:

- (1) to KDHE:

Department of Health and Environment
1000 SW Jackson St., Suite 420
Topeka, Kansas 66612
Attention: Bureau of Water

with a copy to its General Counsel

- (2) to the Authority:

Kansas Development Finance Authority
534 S. Kansas Avenue, Suite 800
Topeka, Kansas 66603
Attention: President

(3) Build America Mutual Assurance Company
200 Liberty Street, 27th Floor
New York, NY 10281
Attention: Surveillance
Re: Policy No. [_____]_
Telephone: (212) 235-2500
Telecopier: (212) 235-1542
Email: notices@buildamerica.com.

(4) to the Municipality:

at the address set forth on *Exhibit H*.

All notices given by telefax as aforesaid shall be deemed given as of the date of evidence of receipt thereof by the recipient. All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so deposited in the United States Postal Service, if postage is prepaid. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 7.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

Section 7.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

Section 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 7.06. Governing Law and Regulations. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, including the Loan Act and the Regulations which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

Section 7.07. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by KDHE.

Section 7.08. Further Assurances. The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

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SIGNATURE AND SEAL

IN WITNESS WHEREOF, KDHE and the Municipality have caused this Loan Agreement to be executed, sealed and delivered, effective as of the date above first written.

**THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, acting on
behalf of THE STATE OF KANSAS**

By: _____
Janet Stanek
Secretary
Kansas Department of Health and Environment

Date: _____

CITY OF WICHITA, KANSAS

(Seal)

By: _____
Brandon J. Whipple, Mayor

Date: _____

ATTEST:

By: _____
Karen Sublett, City Clerk

EXHIBIT A

DESCRIPTION OF THE PROJECT

Construction of a new drinking water treatment plant, known as the Northwest Water Treatment Facility, with a firm capacity of 120 MGD. The project includes all related appurtenances and related offsite infrastructure.

EXHIBIT B

LOAN REPAYMENT SCHEDULE

Dedicated Source of Revenue

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide Gross Revenues sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the Debt Service Requirements on the Loan and any other Utility Indebtedness as and when the same become due at the Maturity thereof or on any interest payment date, (c) pay all other amounts due at any time under the Loan Agreement, (d) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility, (e) make the additional transfers of moneys on deposit in the Revenue Fund as described in *Section 3.02(c)* hereof and (f) enable the Municipality to maintain the Debt Service Coverage Ratios described in *Section 3.02(b)* hereof, all as more fully set forth in said *Sections 3.02(b) and 3.02(c)*; provided, however, the pledge of the Gross Revenues contained herein shall be subject to reasonable expenses of operation and maintenance of the System.

Loan Repayment Schedule

The Municipality and KDHE have agreed that interest becoming due semiannually on the Loan during the construction period for the Project may be capitalized and repaid as a part of the Loan. In this regard, KDHE shall give the Municipality written notice of each semiannual installment of interest becoming due during the construction period. At its option, the Municipality may elect to pay such amounts, and if so elected, must pay such amounts within 30 days of receipt of the notice of their becoming due. If the Municipality does not elect to pay such amounts within 30 days of receipt of such notice, the amount then due and owing as semiannual interest on the Loan shall be capitalized and added to the principal amount of the Loan and shall bear interest at the rate of interest set forth in *Section 2.02* hereof.

KANSAS PUBLIC WATER SUPPLY LOAN FUND

Preliminary Schedule for Construction Loan Agreement

Amortization of Loan Costs as of 3/1/2022

Prepared for:

City of Wichita Project No. 2979.2

Project Principal: 60,000,000.00
Interest During Const.: 0.00
Service Fee During Const.: 0.00
Gross Loan Costs: 60,000,000.00

Gross Interest Rate Allocation	thru 2/1/2029	after 2/1/2029
Service Fee Rate:	0.99%	0.35%
Net Loan Interest Rate:	0.35%	0.99%

Gross Interest Rate: 1.34%
First Payment Date: 8/1/2025
Number of Payments: 40

Payment Number	Payment Date	Beginning Balance	Interest Payment	Principal Payment	Service Fee	Total Payment	Ending Balance
1	8/1/2025	60,000,000.00	105,000.00	1,312,956.84	297,000.00	1,714,956.84	58,687,043.16
2	2/1/2026	58,687,043.16	102,702.33	1,321,753.65	290,500.86	1,714,956.84	57,365,289.51
3	8/1/2026	57,365,289.51	100,389.26	1,330,609.40	283,958.18	1,714,956.84	56,034,680.11
4	2/1/2027	56,034,680.11	98,060.69	1,339,524.48	277,371.67	1,714,956.84	54,695,155.63
5	8/1/2027	54,695,155.63	95,716.52	1,348,499.30	270,741.02	1,714,956.84	53,346,656.33
6	2/1/2028	53,346,656.33	93,356.65	1,357,534.24	264,065.95	1,714,956.84	51,989,122.09
7	8/1/2028	51,989,122.09	90,980.96	1,366,629.73	257,346.15	1,714,956.84	50,622,492.36
8	2/1/2029	50,622,492.36	88,589.36	1,375,786.14	250,581.34	1,714,956.84	49,246,706.22
9	8/1/2029	49,246,706.22	243,771.20	1,385,003.90	86,181.74	1,714,956.84	47,861,702.32
10	2/1/2030	47,861,702.32	236,915.43	1,394,283.43	83,757.98	1,714,956.84	46,467,418.89
11	8/1/2030	46,467,418.89	230,013.72	1,403,625.14	81,317.98	1,714,956.84	45,063,793.75
12	2/1/2031	45,063,793.75	223,065.78	1,413,029.42	78,861.64	1,714,956.84	43,650,764.33
13	8/1/2031	43,650,764.33	216,071.28	1,422,496.72	76,388.84	1,714,956.84	42,228,267.61
14	2/1/2032	42,228,267.61	209,029.92	1,432,027.45	73,899.47	1,714,956.84	40,796,240.16
15	8/1/2032	40,796,240.16	201,941.39	1,441,622.03	71,393.42	1,714,956.84	39,354,618.13
16	2/1/2033	39,354,618.13	194,805.36	1,451,280.90	68,870.58	1,714,956.84	37,903,337.23
17	8/1/2033	37,903,337.23	187,621.52	1,461,004.48	66,330.84	1,714,956.84	36,442,332.75
18	2/1/2034	36,442,332.75	180,389.55	1,470,793.21	63,774.08	1,714,956.84	34,971,539.54
19	8/1/2034	34,971,539.54	173,109.12	1,480,647.53	61,200.19	1,714,956.84	33,490,892.01
20	2/1/2035	33,490,892.01	165,779.92	1,490,567.86	58,609.06	1,714,956.84	32,000,324.15
21	8/1/2035	32,000,324.15	158,401.60	1,500,554.67	56,000.57	1,714,956.84	30,499,769.48
22	2/1/2036	30,499,769.48	150,973.86	1,510,608.38	53,374.60	1,714,956.84	28,989,161.10
23	8/1/2036	28,989,161.10	143,496.35	1,520,729.46	50,731.03	1,714,956.84	27,468,431.64
24	2/1/2037	27,468,431.64	135,968.74	1,530,918.34	48,069.76	1,714,956.84	25,937,513.30
25	8/1/2037	25,937,513.30	128,390.69	1,541,175.50	45,390.65	1,714,956.84	24,396,337.80
26	2/1/2038	24,396,337.80	120,761.87	1,551,501.38	42,693.59	1,714,956.84	22,844,836.42
27	8/1/2038	22,844,836.42	113,081.94	1,561,896.44	39,978.46	1,714,956.84	21,282,939.98
28	2/1/2039	21,282,939.98	105,350.55	1,572,361.15	37,245.14	1,714,956.84	19,710,578.83
29	8/1/2039	19,710,578.83	97,567.37	1,582,895.96	34,493.51	1,714,956.84	18,127,682.87
30	2/1/2040	18,127,682.87	89,732.03	1,593,501.36	31,723.45	1,714,956.84	16,534,181.51
31	8/1/2040	16,534,181.51	81,844.20	1,604,177.82	28,934.82	1,714,956.84	14,930,003.69
32	2/1/2041	14,930,003.69	73,903.52	1,614,925.81	26,127.51	1,714,956.84	13,315,077.88
33	8/1/2041	13,315,077.88	65,909.64	1,625,745.81	23,301.39	1,714,956.84	11,689,332.07
34	2/1/2042	11,689,332.07	57,862.19	1,636,638.32	20,456.33	1,714,956.84	10,052,693.75
35	8/1/2042	10,052,693.75	49,760.83	1,647,603.80	17,592.21	1,714,956.84	8,405,089.95
36	2/1/2043	8,405,089.95	41,605.20	1,658,642.73	14,708.91	1,714,956.84	6,746,447.22
37	8/1/2043	6,746,447.22	33,394.91	1,669,755.65	11,806.28	1,714,956.84	5,076,691.57
38	2/1/2044	5,076,691.57	25,129.62	1,680,943.01	8,884.21	1,714,956.84	3,395,748.56
39	8/1/2044	3,395,748.56	16,808.96	1,692,205.32	5,942.56	1,714,956.84	1,703,543.24
40	2/1/2045	1,703,543.24	8,432.54	1,703,543.24	2,981.06	1,714,956.84	0.00
Totals			4,935,686.57	60,000,000.00	3,662,587.03	68,598,273.60	

EXHIBIT C

CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

The standard conditions applicable to the Loan Agreement are:

1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:
 - a. Initiation of Operation no later than February 1, 2025
 - b. Project Performance Certification 365 days following Initiation of Operation.

KDHE must be promptly notified of any proposed changes to this project schedule.

2. The Municipality must certify that all easements and rights-of-way necessary to allow construction of the Project have been obtained (*i.e.*, all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).
3. A final plan of operations shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an overall Project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and the projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the Loan Repayments and any other debt paid by the water system.
4. The final operations and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion. The operations and maintenance manual must include, but is not limited to, a description of the operation and managerial responsibility, detailed operation and controls, operators and personnel classification and requirements, operational testing, equipment maintenance schedule, operational records, and emergency operating and shut-down procedures.
5. The rates and ordinances enacting the System user charges and System use requirements necessary to satisfy the rate covenants set forth in *Section 3.02(b)* as of the date of Initiation of Operation shall be enacted prior to initiation of operation, and the Municipality shall have provided KDHE with a schedule and timetable satisfactory to KDHE of the remaining rates and ordinances expected to be enacted to support the Project.
6. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.
7. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project; provided that nothing contained herein prevents the Municipality from continuing such relationship for longer than one year. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:

- a. The Municipality agrees the performance standards applicable to the Project are:
 1. all construction deficiencies have been resolved.
 2. all testing requirements of the specifications have been performed and met.
 - b. The final plan of operation and operation and maintenance manual submitted in accordance with **Exhibit C**, Condition No. 3 and 4.
 - c. One year after completion of construction and initial operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and requirements contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance; and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
 - d. In the event the Project does not meet the performance standards, Municipality agrees to furnish KDHE with an annual report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.
8. If this Project is for a segment of a total project for the System, KDHE does not assume any obligation, commitment, or responsibility for funding any other anticipated steps, phases, segments or stages or any other improvements to the System not constituting the Project. The Municipality agrees to complete the total System improvements of which this Project is a part in accordance with the schedule presented in **Exhibit C(1)**, regardless of whether KDHE funding is available for the remaining System improvements.
 9. The Municipality shall obtain any required Corps of Engineers Section 404 and/or Section 10 permit prior to awarding the construction contract.
 10. The Municipality shall follow applicable state procurement laws and regulations.
 11. The Municipality hereby agrees to implement measures to mitigate all known adverse environmental effects of this project. The following mitigative actions are required:
 - a. proper grading, drainage and slope protection to eliminate erosion;
 - b. riparian habitat will be avoided, and disturbed areas will be reseeded with native plant species;
 - c. directional boring at all stream crossings, where practical, to minimize aquatic habitat impacts;
 - d. in the event that construction work uncovers buried archeological artifacts, the Kansas Historical Society should be contacted immediately; and
 - e. contacting KCC in the event of unexpected circumstances are encountered during construction such as the discovery of abandoned oil, gas, or exploratory holes.
 12. The Municipality agrees and consents to KDHE's authority to monitor and enforce compliance with the mitigative measures identified in paragraph 11 above and the Loan Agreement conditions.

13. The Municipality further agrees that those members of the public who participate in the environmental review process shall have the right to appeal the decisions made within that process. Further, that all such appeals shall be conducted pursuant to the Kansas Administrative Procedures Act (K.S.A. 77-5501, *et seq.*) and the Act for Judicial Review (77-601, *et seq.*).
14. The Municipality agrees to comply with the Kansas Act Against Discrimination, K.S.A. 44-1001, *et seq.* and the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111, *et seq.* as provided by law and to include those provisions in every contract or purchase order relating to the Project so that they are binding upon such subcontractors or vendors.
15. In order to comply with KPWSLF wage rate requirements the Municipality shall,
 - a. insert in full in any contract funded by this loan agreement in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, wage rate contract provisions, found in 29 CFR 5.5, as indicated by EPA and US Department of Labor, generally known as Davis Bacon requirements;
 - b. while the solicitation remains open, shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The municipality shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Municipality may request a finding from KDHE that there is not reasonable time to notify interested contractors of the modification of the wage determination. KDHE will provide a report of its findings to the Municipality.
 - c. incorporate any modifications or supersedes DOL makes to the wage determination contained in the solicitation if the contract is not awarded within 90 days of bid opening. Unless KDHE, at the request of the Municipality, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Municipality shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
 - d. review all subcontracts subject to Davis-Bacon entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
 - e. either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order, if the Department of Labor (DOL) issues a revised wage determination applicable to the contract after the award of a contract or the issuance of an ordering instrument due to a DOL determination

that the municipality has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. The Municipality's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

- f. provide written confirmation in a form satisfactory to KDHE indicating whether or not the Project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified weeks. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls;
- g. interview a sufficient number of employees entitled to Davis Bacon Act prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 20 CFR 5.6 (a)(6), all interviews must be conducted in confidence. The Municipality must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of SF 1445 are available from EPA on request;
- h. establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. The Municipality shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- i. periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The municipality shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis -Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Municipality must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The Municipality must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Municipality shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- j. periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (h) and (i) above.
- k. must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact Julie Milazzo at Milazzo.Julie@epa.gov or 206-553-2429 ; and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd/america2.htm.

16. Prior to 90% of project completion the municipality agrees to execute a water conservation plan using the most recent municipal water conservation plan guidelines provided by the Kansas Water Office.
17. The Municipality must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. Other civil rights laws may impose additional requirements on the Municipality. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.
18. Municipalities that receive over \$100,000 in KPWSLF funds shall comply with the Anti-Lobbying Act, Title 40 CFR Part 34, and file an Anti-Lobbying Certification form and the Disclosure of Lobbying Activities form to KDHE when required. Furthermore, the Municipality shall require that the language of this certification be included in the award of any contracts funded by this loan.
19. The Municipality certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and Subpart C of 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions.” The Municipality must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and Subpart B of 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient may search for exclusion records at www.sam.gov.
20. The Municipality agrees to comply with Executive Order No. 11246 by including Section 202 of E.O. 11246 in all contracts funded in part with proceeds of this loan.
21. The Municipality is prohibited from procuring goods or services from persons who have been convicted of violations of the Clean Air Act or the Clean Water Act.
22. None of the funds made available by this Loan Agreement shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
23. If project construction activities reveal the presence of lead pipes or lead appurtenances that are being used in the distribution system or used in service line assemblies up to the premise plumbing of the customer, the municipality will either replace the lead infrastructure or document the location of the lead infrastructure component and maintain such documentation for use in planning for a future removal project.

EXHIBIT D

USE OF LOAN PROCEEDS

The Project will be jointly funded by proceeds of the WIFIA Credit Agreement, City of Wichita Utility Funds and loans from KDHE. KDHE funding is expected to be provided over multiple loans, the aggregate total of which will not exceed \$267,342,000.00.

Project components and anticipated costs are summarized as follows:

Dev. Ph.	Development Phase Activities	\$555,631
NWWTF	Phase 1 – Preliminary Design and development of Cost Proposal for NWWTF	\$5,999,999
	Phase 2 – Final Design and Construction of NWWTF	\$494,255,000
Elect. Service	Design/Construction of Electrical Service Infrastructure	\$11,650,000
Other Project Related Costs - Add Alternates	Land Acquisition Costs	\$10,400,000
	Hess Reservoir Improvements	\$12,000,000
	Right-of-way and Site Improvements	\$1,750,000
OSR	Phase 1 – Owner’s Site Representative	\$789,886
	Phase 2 - Owner’s Site Representative	\$20,000,000
Financial	SRF Capitalized Interest	\$15,384,615
	WIFIA Application Costs	\$400,000

EXHIBIT E

INSTRUCTIONS FOR REQUESTING DISBURSEMENT

1. All payment requests must be filed on the Request for Disbursement from KDHE Revolving Loan Programs form (currently located at https://www.kdheks.gov/pws/documents/Loan_Disbursement_Request.pdf) and represent the actual completion level of the project at the date the request is prepared.
2. All cost entries must be based upon allowable work in place which is due and payable. This means that you may not request payment for:
 - a. Any work or services which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
 - b. Any work performed under a change order unless written approval of the change order has been given by the State.
 - c. Any ineligible project costs.
 - d. Any retainage which you are withholding from the construction contractor, engineer, etc.
 - e. Easements acquired through eminent domain are not eligible for funding.
 - f. Costs incidental to normal operating overhead of a municipality, whether performed by municipal employees, the engineer, or the attorney.

It is essential that you understand the cost basis of the approved loan amount. It is, therefore, necessary that you read the Loan Agreement (including all conditions) and its transmittal letter, any loan amendments and project correspondence, and that you maintain current and accurate files on all approved change orders. Failure to follow these procedures may result in your requesting and subsequently receiving overpayment of loan funds which later may, in turn, result in substantial inconvenience to you and your municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

3. Submit an original signature of the form and one set of supporting documentation directly to:

Kansas Department of Health & Environment
Bureau of Water
Public Water Supply Section
1000 SW Jackson St., Suite 420
Topeka, Kansas 66612

You should retain one copy for your records.

**EXHIBIT F
MUNICIPALITY ORDINANCE**

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON NOVEMBER 03, 2020**

The Governing Body of the City of Wichita, Kansas met in regular session at the usual meeting place, at 9:00 a.m., the following members being present and participating, to-wit:

Mayor Brandon Whipple, Brandon Johnson, Becky Tuttle, James Clendenin, Jeff Blubaugh, Bryan Frye, and Dr. Cindy Claycomb

Absent: None.

The Mayor declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Among other business, there came on for first reading, consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN THE CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

Following first reading, Mayor Brandon Whipple moved that said Ordinance be passed. The motion was seconded by Council member Dr. Cindy Claycomb. Said Ordinance was duly read and considered, and upon being put, the motion for the adoption of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yes: Mayor Brandon Whipple, Brandon Johnson, Becky Tuttle, James Clendenin, Jeff Blubaugh, Bryan Frye, and Dr. Cindy Claycomb

No: None

Thereafter, the Governing Body of the City of Wichita, Kansas met again in regular session, at the usual meeting place in said City on November 10, 2020 at 9:00 a.m., the following members being present and participating, to-wit:

Mayor Brandon Whipple, Brandon Johnson, Becky Tuttle, Jeff Blubaugh, Bryan Frye, and Dr. Cindy Claycomb

Absent: James Clendenin

The Mayor declared that a quorum was present and called the meeting to order.

Thereupon, among other business, there again came on for second reading, consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN THE CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

Thereupon, Mayor Brandon Whipple moved that said Ordinance be passed. The motion was seconded by Council member Dr. Cindy Claycomb. Said Ordinance was duly read and considered, and upon being put, the motion for the adoption of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yes: Mayor Brandon Whipple, Brandon Johnson, Becky Tuttle, Jeff Blubaugh, Bryan Frye, and Dr. Cindy Claycomb

No: None

Thereupon, the Mayor declared said Ordinance duly adopted and the Ordinance was then duly numbered Ordinance No. 51-366 and was signed by the Mayor and attested by Clerk.

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.



Clerk

(Published in The Wichita Eagle on November 13, 2020)

ORDINANCE NO. 51-366

AN ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN OF CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

WHEREAS, the City of Wichita, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”) and a municipality as said term is defined in the Kansas Public Water Supply Loan Act, K.S.A. 65-163d *et seq.*, as amended (the “Loan Act”); and

WHEREAS, the City Council (the “Governing Body”) of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the “City of Wichita, Kansas Water and Sewer Utility” (the Utility”); and

WHEREAS, the City is authorized under the provisions of K.S.A. 10-1201 *et seq.*, as amended, (the “Utility Revenue Bond Act”) to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the Utility, provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues (as defined in the Bond Resolutions defined below) derived by the City from the operation of the Utility; and

WHEREAS, the Governing Body has heretofore by various resolutions (collectively, together with each hereinafter-defined Loan Agreement when entered, the “Bond Resolutions”), duly adopted, found and determined it to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend or enlarge the Utility, and found and determined it to be necessary and advisable to issue certain revenue bonds pursuant to the provisions of the Utility Revenue Bond Act in order to pay the costs thereof, secured on a parity basis by the Utility’s Net Revenues and co-equal in priority and lien (collectively, the “Parity Bonds”); and

WHEREAS, the City has previously identified the need for a greenfield water treatment plant to serve the City and adopted Resolution No. 19-463 authorizing the issuance of revenue bonds of the City in an amount not to exceed \$636,165,665 to pay the costs of the Project (as defined below), interest on interim financing and associated reserves; and

WHEREAS, the City has previously issued a revenue bond in the principal amount of not to exceed \$331,000,000 (the “WIFIA Bond”) as a Parity Bond and delivered the same to the United States Environmental Protection Agency (the “WIFIA Credit Provider”) to enable the City to participate in the federal Water Infrastructure Finance and Innovation Act (“WIFIA”) and finance a portion of the costs of the Project, subject to the terms of a credit agreement between the City and the WIFIA Credit Provider (the “WIFIA Credit Agreement”); and

WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking Water Act (the “Federal Act”) established the Drinking Water Loan Fund to assist public water supply systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health, and authorized the Environmental Protection Agency (the “EPA”) to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Loan Act, the State has established the Kansas Public Water Supply Loan Fund (the “Revolving Fund”) for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health and Environment (“KDHE”) is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Kansas Development Finance Authority (the “Authority”) and KDHE have entered into a Master Indenture (the “Master Indenture”) pursuant to which KDHE agrees to enter into loan agreements with Municipalities for public water supply system projects and to pledge the Loan Repayments (as defined in the Master Indenture) received pursuant to such loan agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the “KDFA Bonds”) for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, the Utility includes a Public Water Supply System, as said term is defined in the Loan Act; and

WHEREAS, the City previously adopted Resolution No. 20-044 authorizing the City, pursuant to the Loan Act, to submit an Application to KDHE to obtain a loan from the Revolving Fund in an amount not to exceed \$267,342,000 to finance a portion of the costs of improvements to its Utility consisting of the following particulars:

Construction of a new drinking water treatment plant, known as the Northwest Water Treatment Facility, with a firm capacity of 120 MGD. The project includes all related appurtenances and related offsite infrastructure

(the "Project"); and

WHEREAS, the City has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-15-50 through 28-15-65 (the "Regulations") applicable thereto necessary to qualify for the Loan; and

WHEREAS, KDHE has informed the City that it has been approved for loans in an aggregate amount of not to exceed \$267,342,000 (each a "Loan" and collectively the "Loans") in order to finance a portion of the cost of the Project, with the first such Loan to be made in calendar year 2020 in an amount not to exceed \$55,000,000 (the "2020 Loan"); and

WHEREAS, the City is permitted, pursuant to the provisions of the Bond Resolutions, to issue and enter into obligations ("Parity Obligations") secured by the Net Revenues on a parity and co-equal in priority and lien with the Parity Bonds and other Parity Obligations (Parity Bonds and Parity Obligations being referred to herein collectively as "Parity Indebtedness"), and each Loan when entered into shall be such a Parity Obligation; and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional obligations on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have been, or can and will be in due course and as required, satisfied prior to or upon the execution and delivery of the Loans; provided that such conditions precedent shall only apply to amounts actually disbursed pursuant to the terms of the Loan Agreements (defined below); and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and desirable to accept the Loans as Parity Obligations payable from Net Revenues of the Utility and to enter into the Loan Agreements and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreements.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Authorization of the Project. The Project (as defined above) is hereby determined to be advisable and it is further hereby authorized, ordered and directed that the Project shall be constructed in accordance with the plans and specifications and estimates of costs therefor, which have been and are hereby approved by the Governing Body and are on file in the office of the City Clerk.

Section 2. Authorization of Loan Agreements. The City is hereby authorized to accept the Loans and to enter into, deliver, and perform all obligations under the Loan Agreements, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreements") to finance the Project Costs (as defined in the Loan Agreements). The Mayor

and Clerk are hereby authorized to execute the Loan Agreements from time to time as necessary to pay Project Costs in substantially the form of Loan Agreement relating to the 2020 Loan presented to the Governing Body this date, with such changes or modifications thereto (including applicable interest rates and repayment periods for each Loan Agreement) as may be approved by the Mayor and the City's legal counsel, the Mayor's execution of each Loan Agreement being conclusive evidence of such approval.

Section 3. Establishment of Dedicated Source of Revenue for Repayment of Loans.

Pursuant to the Loan Act, the City hereby adopts the Net Revenues (as defined in the Loan Agreements) as the dedicated source of revenue for repayment of the Loans. Such dedicated source of revenue is hereby pledged as security for repayment of the Loans, which pledge of security is no less than a Parity Obligation as defined in the WIFIA Credit Agreement and the Parity Bond Resolutions (as said terms are defined in the Loan Agreements). The Loans shall be a special obligation of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal and interest on the Loans. The Loans shall not be or constitute a general obligation of the City and the taxing power of the City is not pledged to the payment of the Loans, either as to principal or interest.

Section 4. Terms, Details and Conditions of the Loan Agreements. Each Loan shall be dated and bear interest, shall be payable at such times, shall be in such forms, shall be subject to prepayment, and shall be governed by and subject to the provisions, covenants and agreements set forth in the applicable Loan Agreement.

Section 5. Rate Covenant. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Gross Revenues sufficient to (a) pay Current Expenses (as defined in the Loan Agreements); (b) pay the Debt Service Requirements on the Utility Indebtedness (each as defined in the Loan Agreements) as and when the same become due; (c) provide reasonable and adequate reserves for the payment of the Parity Indebtedness and the interest thereon and for the protection and benefit of the Utility as provided in this Ordinance and the Loan Agreements, and (d) enable the Municipality to maintain the Debt Service Coverage Ratios described in the Loan Agreements, all as more fully set forth in the Loan Agreements. The Loan Agreements may establish requirements in excess of the requirements set forth herein.

Section 6. Further Authority. The Mayor, Clerk and other City officials and legal counsel are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 7. Governing Law. The Ordinance and the Loan Agreements shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City, approval by the Mayor and either (a) publication once in the official newspaper of the City, or (b) publication of a summary hereof certified as legally accurate and sufficient by the City Attorney.

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PASSED by the Governing Body of the City on November 3, 2020.



ATTEST:

A handwritten signature in blue ink, appearing to read "Karen Sublett", is written over a horizontal line.

Karen Sublett, City Clerk

A handwritten signature in blue ink, appearing to read "Brandon J. Whipple", is written over a horizontal line.

Brandon J. Whipple, Mayor

EXHIBIT G

FORM OF OPINION OF MUNICIPALITY'S COUNSEL

[Date]

Kansas Development Finance Authority
Topeka, Kansas

The Kansas Department of Health and
Environment, acting on behalf of
The State of Kansas
Topeka, Kansas

Re: Loan Agreement effective as of March 1, 2022, between the Kansas Department of Health and Environment, acting on behalf of the State of Kansas, and the City of Wichita, Kansas (the "Municipality")

We have acted as special counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Loan Agreement (the "Loan Agreement"). In my capacity as special counsel to the Municipality, We have examined original or certified copies of minutes, ordinances of the Municipality and other documents relating to the authorization of the Project, the authorization, execution and delivery of the Loan Agreement, and the establishment of a dedicated source of revenue for repayment of the Loan evidenced by the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

In this connection, we have examined the following:

- (a) an executed or certified copy of the Loan Agreement;
- (b) proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;
- (c) Ordinance No 51-366 of the Municipality (the "Ordinance") adopted on November 3, 2020, and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement; and
- (d) such other proceedings, documents and instruments as We have deemed necessary or appropriate to the rendering of the opinions expressed herein.

In this connection, we have reviewed such documents, and have made such investigations of law, as deemed relevant and necessary as the basis for the opinions hereinafter expressed.

Based upon the foregoing, it is my opinion, as of the date hereof, that:

1. The Municipality is a municipal corporation duly created, organized and existing under the laws of the State.
2. The Municipality operates a Public Water Supply System, as said term is defined in the Loan Act.
3. The Project has been duly authorized by the Municipality.
4. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Ordinance to, execute and deliver, and perform its obligations under, the Loan Agreement.
5. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion we have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.
6. The Loan Agreement is a Parity Obligation as defined in the WIFIA Credit Agreement and the Parity Bond Resolutions; provided that the Secretary or KDHE may have certain additional powers, payments, and security under or incident to the Loan Act and the Regulations.
7. By adopting the Ordinance, the Municipality has duly adopted the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.
8. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not materially, adversely conflict with or result in a material breach of any of the terms of, or constitute a material default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument known to us to which the Municipality is a party or by which it or its Net Revenues are pledged, or any of the rules or regulations applicable to the Municipality or its Net Revenues, or of any court or other governmental body.

This opinion may be relied upon by the addressees alone and only in connection with the Loan Agreement referenced herein and may not be used or relied upon for any other purpose or by any other person for any reason whatsoever, without obtaining in each instance our prior written consent.

Very truly yours,

EXHIBIT H

MUNICIPALITY'S NOTICE ADDRESS

The City of Wichita, Kansas
Director of Public Works & Utilities
455 N. Main St., 8th Floor
Wichita, Kansas 67202

with copies to:

The City of Wichita, Kansas
Director of Finance
455 N. Main St., 12th Floor
Wichita, Kansas 67202

The City of Wichita, Kansas
Director of Law
455 N. Main St., 13th Floor
Wichita, Kansas 67202

EXHIBIT I

FORM OF BOND INSURANCE POLICY

[TO BE PROVIDED]

EXHIBIT J

FORM OF QUALIFIED USER CERTIFICATE

The undersigned is making the following representations and covenants on behalf of the City of Wichita, Kansas (the “Municipality”) in connection with the loan of funds to it (the “Loan”) by the Kansas Department of Health and Environment (“KDHE”). The loan between KDHE and the Municipality (the “Loan Agreement”) is dated March 1, 2022. The Municipality understands that all or a portion of the proceeds of its Loan may be funded with proceeds of bonds issued by Kansas Development Finance Authority (“KDFA”) the interest on which is intended to be exempt from Federal income tax (“Tax-Exempt Bonds”). In the Loan Agreement the Municipality agreed that it would not use, or permit any person to use, any portion of the proceeds of the Loan or the facilities financed with the proceeds of the Loan (the “Financed Facility”) in a manner that could cause interest on any of the Tax-Exempt Bonds to become subject to income tax. Each of the following representations and covenants is made for the purpose of satisfying this covenant contained in the Loan Agreement.

1. In addition to the terms defined above, the following capitalized terms have the meaning set out below:

“**Management or Operating Agreement**” means a legal agreement with a Non-Qualified User where the Non-Qualified User provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. However, a contract for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing or similar services) is not a Management or Operating Agreement.

“**Non-Qualified Use**” generally means any use of the Financed Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of the Financed Facility by any other member of the general public. The rules set out in United States § 1.141-3 determine whether Bond Proceeds of the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

“**Non-Qualified User**” means any person or entity other than a Qualified User.

“**Opinion of Bond Counsel**” means the written opinion of a firm of nationally recognized Bond Counsel acceptable to KDFA to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

“Qualified User” means the City, a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

2. The Municipality is the owner of the Financed Facility. As long as any portion of the Loan is unpaid the Municipality will never permit any of the Financed Facility to be used in any Non-Qualified Use without first notifying KDFA and KDHE in writing and obtaining an Opinion of Bond Counsel.

3. None of the proceeds of the Loan will be loaned directly or indirectly to any Non-Qualified User.

4. All costs previously paid by the Municipality that are to be reimbursed from the proceeds of the Loan either (1) were paid by the Municipality not more than 3 years prior to the date reimbursement is requested or (2) were for costs incurred in connection with the planning or design of the project paid prior to the date construction commenced. Loan proceeds will not be available to reimburse outstanding tax-exempt obligations of a political subdivision, except in certain limited circumstances. Should you wish to discuss applicable restrictions, please contact the KDHE Program Administrator.

5. No operating costs or expenses of the Municipality are being paid from the proceeds of the Loan.

6. The Municipality will not enter into any Management or Operating Agreement of the Financed Facility or lease any portion of the Financed Facility to any Non-Qualified User without first (1) notifying KDFA and KDHE in writing and (2) obtaining an Opinion of Bond Counsel.

7. Upon the written request of KDHE or KDFA the Municipality will provide written confirmation of compliance with each of the forgoing certifications and covenants in a form acceptable to KDHE and KDFA.

CITY OF WICHITA, KANSAS

By: _____
Brandon J. Whipple, Mayor

QUALIFIED USER CERTIFICATE

The undersigned is making the following representations and covenants on behalf of the City of Wichita, Kansas (the “Municipality”) in connection with the loan of funds to it (the “Loan”) by the Kansas Department of Health and Environment (“KDHE”). The loan between KDHE and the Municipality (the “Loan Agreement”) is dated March 1, 2022. The Municipality understands that all or a portion of the proceeds of its Loan may be funded with proceeds of bonds issued by Kansas Development Finance Authority (“KDFA”) the interest on which is intended to be exempt from Federal income tax (“Tax-Exempt Bonds”). In the Loan Agreement the Municipality agreed that it would not use, or permit any person to use, any portion of the proceeds of the Loan or the facilities financed with the proceeds of the Loan (the “Financed Facility”) in a manner that could cause interest on any of the Tax-Exempt Bonds to become subject to income tax. Each of the following representations and covenants is made for the purpose of satisfying this covenant contained in the Loan Agreement.

1. In addition to the terms defined above, the following capitalized terms have the meaning set out below:

“**Management or Operating Agreement**” means a legal agreement with a Non-Qualified User where the Non-Qualified User provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. However, a contract for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing or similar services) is not a Management or Operating Agreement.

“**Non-Qualified Use**” generally means any use of the Financed Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of the Financed Facility by any other member of the general public. The rules set out in United States § 1.141-3 determine whether Bond Proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

“**Non-Qualified User**” means any person or entity other than a Qualified User.

“**Opinion of Bond Counsel**” means the written opinion of a firm of nationally recognized Bond Counsel acceptable to KDFA to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

“**Qualified User**” means the City, a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

2. The Municipality is the owner of the Financed Facility. As long as any portion of the Loan is unpaid the Municipality will never permit any of the Financed Facility to be used in any Non-Qualified Use without first notifying KDFA and KDHE in writing and obtaining an Opinion of Bond Counsel.

3. None of the proceeds of the Loan will be loaned directly or indirectly to any Non-Qualified User.

4. All costs previously paid by the Municipality that are to be reimbursed from the proceeds of the Loan either (1) were paid by the Municipality not more than 3 years prior to the date reimbursement is requested or (2) were for costs incurred in connection with the planning or design of the project paid prior to the date construction commenced. Loan proceeds will not be available to reimburse outstanding tax-exempt obligations of a political subdivision, except in certain limited circumstances. Should you wish to discuss applicable restrictions, please contact the KDHE Program Administrator.

5. No operating costs or expenses of the Municipality are being paid from the proceeds of the Loan.

6. The Municipality will not enter into any Management or Operating Agreement of the Financed Facility or lease any portion of the Financed Facility to any Non-Qualified User without first (1) notifying KDFA and KDHE in writing and (2) obtaining an Opinion of Bond Counsel.

7. Upon the written request of KDHE or KDFA the Municipality will provide written confirmation of compliance with each of the forgoing certifications and covenants in a form acceptable to KDHE and KDFA.

CITY OF WICHITA, KANSAS

By: _____
Brandon J. Whipple, Mayor

COMPLIANCE CERTIFICATE
OF THE CITY OF WICHITA, KANSAS
FOR ISSUING PARITY OBLIGATIONS

Relating to the Loan Agreement, effective as of March 1, 2022, between The Kansas Department of Health and Environment acting on behalf of the State of Kansas and the City of Wichita, Kansas, KPWSLF Project No. 2979.2

We, the undersigned, hereby certify, as of and on this _____, 2022, that we are the appointed, qualified and acting Mayor and Treasurer, respectively, of the City of Wichita, Kansas (the "City"), and as such officers we are familiar with the official books and records of the City and have all authority and information necessary to execute this Certificate on behalf of the City. In connection with the consummation of a loan in the amount of \$60,000,000 extended by The Kansas Department of Health and Environment acting on behalf of the State of Kansas ("KDHE") to the City, KPWSLF Project No. 2979.2 (the "Loan") as evidenced by the Loan Agreement, effective as of March 1, 2022 (the "Loan Agreement"), between KDHE and the City, we hereby further certify as follows:

1. All words and terms not otherwise defined herein shall have the meaning assigned to them by the Loan Agreement.

2. This Certificate is being delivered pursuant to the Outstanding Parity Bond Resolutions. By the delivery of this Certificate, the undersigned certifies that all applicable requirements and conditions to qualify the Loan as a Parity Obligation pursuant to the Outstanding Parity Bond Resolutions shall have been complied with and satisfied.

3. The City is not in default in the payment of the Debt Service Requirements on any Parity Indebtedness now Outstanding or in making any payment at the time required to be made into the Funds and Accounts (unless such Additional Parity Indebtedness is being issued to provide funds to cure such default) or in any covenants or procedures established in any ordinance or resolution of the City authorizing existing indebtedness of the Utility. No other Event of Default has occurred and is continuing.

4. The Debt Service Coverage Ratio on all Parity Indebtedness for the two (2) Fiscal Years immediately preceding the consummation of the Loan, as reflected by information provided by the Independent Accountant, is not less than 1.20, including the Loan.

5. The average annual Net Revenues Available for Debt Service derived by the City from the operation of the Utility for two (2) years next preceding the consummation of the Loan, together with estimated additional net income from rate increases in existence at the time of the consummation of the Loan, which would have been generated for the two (2) years preceding issuance of such Loan, shall be in an amount equal to at least one hundred twenty percent (120%) of the maximum annual Debt Service Requirements (expressly included in the City's obligations with respect to the repayment of amounts then due and owing under the terms of any Bond Reserve Insurance Policy) for any ensuing year of all then outstanding revenue indebtedness of the Utility when added to the Debt Service Requirements of the Loan.

6. All reductions, if any, in any Bond Reserve Account have been restored.

7. No provision has been made for a Bond Reserve Account with respect to the Loan and the Loan is not secured by the Bond Reserve Account. Accordingly, the relationship of the amount in the Bond Reserve Account to the total amount of Outstanding Bonds secured by the Bond Reserve Account, as measured against the 2011A Bond Reserve Requirement to the Series 2011A Bonds, has not changed.

8. We have been counseled by City's legal counsel as to the purpose of the foregoing certifications and the meanings of the matters set forth in the foregoing certifications. The City understands that such certifications will be relied upon by the law firm of Triplett Woolf Garretson, LLC, Special Counsel, in rendering its opinions with respect to the Loan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused this certificate to be executed as of the date set forth above.

CITY OF WICHITA, KANSAS

[seal]

By _____
Brandon J. Whipple, Mayor

By _____
Mark Manning, Treasurer

CITY'S CLOSING CERTIFICATE

We, the undersigned, certify that, as of _____, 2022, we are the appointed, qualified and acting Mayor and City Clerk, respectively, of the City of Wichita, Kansas (the "City"), and as such officers we are familiar with the official books and records of the City. In connection with the consummation of a loan in the amount of \$60,000,000 extended by The Kansas Department of Health and Environment acting on behalf of the State of Kansas ("KDHE") to the City, KPWSLF Project No. 2979.2 (the "Loan"), we hereby further certify as follows:

1. ORGANIZATION AND AUTHORITY

1.1. Due Organization. The City is a body corporate and politic and duly created and validly existing municipal corporation under and pursuant to the constitution and statutes of the State of Kansas.

1.2. Meetings. All meetings of the governing body of the City as shown in the Transcript (defined below) were regular meetings, or were meetings held pursuant to regular adjournment at the next preceding meeting, or were special meetings duly called as shown in the Transcript, and each such meeting was duly held, was open to the public at all times and a quorum was present throughout. At all such meetings where required, proper notice of the time, place and purposes of each such meeting was given to the public as required by law.

1.3. Incumbency of Officers. The following named persons were and are the duly appointed, qualified and acting officers and officials of the City at all times during the proceedings relating to the authorization of the Loan as follows:

<u>Name</u>	<u>Position</u>	<u>Term</u>
Brandon J. Whipple	Mayor	01/2020 to current
Brandon Johnson, Dist. I	Council Member	01/2018 to current
Becky Tuttle, Dist. II	Council Member	01/2019 to current
Mike Hoheisel, Dist. III	Council Member	01/2022 to current
Jeff Blubaugh, Dist. IV	Council Member	01/2013 to current
Bryan Frye, Dist. V	Council Member	04/2015 to current
Maggie Ballard, Dist. VI	Council Member	01/2022 to current
Jeff Longwell	Mayor	04/2015 to 01/2020
James Clendenin, Dist. III	Council Member	04/2011 to 12/2020
Jared Cerullo, Dist. III	Council Member	03/2021 to 01/2022
Cindy Claycomb, Dist. VI	Council Member	01/2018 to 01/2022

1.4. Official City Newspaper. During the proceedings relating to the authorization of the Loan, at and during all times, *The Wichita Eagle* was the official newspaper of the City.

1.5. Public Hearing. Pursuant to public notice published in *The Wichita Eagle* on November 1, 2019, a public hearing to discuss the Project (as defined in the Transcript) and receive input on alternatives was held by the governing body of the City on December 3, 2019.

In our opinion, the time and location of the public hearing provided a reasonable opportunity for persons of differing views to appear and be heard, and a reasonable opportunity to be heard was afforded to all persons present at the hearing.

1.6 Public Water Supply System; Project. The City is authorized to operate and maintain a system for the provision to the public of piped water for human consumption, which system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, such system being a public water supply system as defined in K.S.A. 65-163d through 65-163u, inclusive. The City determined the Project to be advisable and authorized, ordered and directed that the Project be constructed in accordance with the plans and specifications and estimates of costs therefor approved by the Governing Body and on file in the office of the City Clerk, all pursuant to an Ordinance adopted by the governing body of the City at duly held meetings as shown in the Transcript (the “Ordinance”).

2. LOAN TRANSCRIPT AND LEGAL DOCUMENTS

2.1. Transcript of Proceedings. The transcript of proceedings (the “Transcript”) relating to the authorization and consummation of the Loan furnished to KDHE includes a true and correct copy of the proceedings had by the governing body of the City and other records, proceedings and documents relating to the authorization of the Project and authorization and consummation of the Loan; said Transcript is, to the best of our knowledge, information and belief, full and complete; such proceedings of the City shown in said Transcript have not been modified, amended or repealed and are in full force and effect as of the date hereof; and said Transcript has been duly filed in the official records of the City.

2.2. Execution of the Loan Agreement. The Loan Agreement, effective as of March 1, 2022 (the “Loan Agreement”), between KDHE and the City has been duly executed and delivered in the name and on behalf of the City by the undersigned its duly authorized officers, pursuant to and in full compliance with the Ordinance; the copies of said document contained in the Transcript are true, complete and correct copies or counterparts of said document as executed and delivered by the City, and are in substantially the same form and text as the copies of such document which were before the governing body of the City and approved by the Ordinance; and said document has not been amended, modified or rescinded and remain in full force and effect as of the date hereof.

2.3. Documents Authorized and Binding. The City has, by all necessary action, duly authorized the Project and the Loan and the execution, delivery, receipt and due performance of the Loan Agreement and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated by the Loan Agreement and the Ordinance. The Loan Agreement, as executed and delivered, constitutes a legal, valid and binding obligation of the City in accordance with its terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties, and except as rights to indemnity, if any, may be limited by principles of public policy).

2.4. Execution of Loan Agreement; Signatures and Seals. The Loan Agreement has been duly signed and executed, by manual signatures by the undersigned as Mayor and City Clerk and, on the date when the Loan Agreement was so executed by us, and at the date hereof, we are the officials indicated by our signatures on the Loan Agreement and by our signatures on this Certificate, respectively. The signatures of each of us, as such officials, respectively, on the Loan Agreement and on this Certificate, are our true and genuine signatures, and the seal affixed or imprinted on the Loan Agreement at the time of its execution was and is the duly authorized and adopted official seal of the City and was thereto affixed by the authority and direction of the governing body of the City, and is the seal affixed to this Certificate.

2.5. Representations in Loan Agreement. Each of the representations of the City made in the Loan Agreement are true and complete in all material respects as of the date hereof as if made on and as of the date hereof, and all agreements to be complied with and obligations to be performed by the City under the Loan Agreement on or prior to the delivery of the Loan Agreement to KDHE have been complied with and performed.

2.6. No Event of Default. To the knowledge of the City, no event has occurred and no condition exists that would constitute an Event of Default under the Loan Agreement or any Outstanding Utility Indebtedness (as defined in the Loan Agreement). There is presently no material default under any resolution, Outstanding Utility Indebtedness, or agreement which would materially adversely affect the ability of the City to make all Loan Repayments (as defined in the Loan Agreement) or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

2.7. No Material Change. To the knowledge of the City, (i) there has been no material change in, as to or affecting the Loan or the City's financial position from and after the date of any financial statements provided to Build America Mutual Assurance Company (the "Insurer"), and (ii) all information supplied by or on behalf of the City to the Insurer remains true and correct in all material respects.

3. LEGAL MATTERS

3.1. Non-Litigation. Other than claims challenging the City's charter, legislative authorities and police powers that lack any reasonable merit, there is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the City; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the collection of revenues of the Utility (as defined in the Loan Agreement); or (5) the imposition and collection of rates, fees and charges for use of the Utility; which if decided adversely to the City could materially and adversely affect the transactions contemplated hereby or the validity or enforceability of the Loan or the Loan Agreement. There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legality of any official act taken in connection with obtaining the Loan; (2) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (3) any of the proceedings had in relation to the

authorization or execution of the Loan Agreement; (4) the pledging of Net Revenues (as defined in the Loan Agreement) to pay the principal of and interest on the Loan; or (5) the ability of the City to make all Loan Repayments (as defined in the Loan Agreement) or otherwise observe and perform its duties, covenants, obligations and agreements under the Loan Agreement

3.2. No Legal Violation. To the best of our knowledge, the execution and delivery of the Loan Agreement by the City will not materially, adversely conflict with or result in a material breach of any of the terms of, or constitute a material default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument known to us to which the City is a party or by which it or its Net Revenues are pledged, or any of the rules or regulations applicable to the City or its Net Revenues, or of any court or other governmental body.

3.3. No Interested Officers. No officer, director or employee of the City is or shall be, either directly or indirectly, a party to or in any manner interested in any contract or agreement of the City with respect to the Loan or the Project financed thereby, or otherwise as will be in violation of any provision of any state statute or any similar law regulating conflicts of interest by officers or employees of public agencies.

3.4. Approvals. All approvals, consents, authorizations and orders required to be obtained by the City in connection with the authorization, execution and delivery of the Loan Agreement and the performance of the terms thereof by the City have been duly obtained.

3.5. Legal Counsel. We have been counseled by City's legal counsel as to the purpose of the foregoing certifications and the meanings of the matters set forth in the foregoing certifications. The City understands that such certifications will be relied upon by the law firm of Triplett Woolf Garretson, LLC, Special Counsel, in rendering its opinions with respect to the Loan.

[Remainder of Page Intentionally Left Blank]

WITNESS our hands and the seal of the City as of the day and year first above written.

Signature

Official Title

Mayor

City Clerk

[seal]



MUNICIPAL BOND INSURANCE COMMITMENT

ISSUER: City of Wichita, Kansas

MEMBER: City of Wichita, Kansas

Effective Date: March 28, 2022

Expiration Date: June 25, 2022

BONDS: Loan Payments in connection with the State of Kansas SRF Loan Program in aggregate principal amount not to exceed \$\$60,000,000

Insurance Payment: 0.250% of the Total Debt Service on the Bonds

BUILD AMERICA MUTUAL ASSURANCE COMPANY (“BAM”) hereby commits, subject to the terms and conditions contained herein or added hereto, to issue its Municipal Bond Insurance Policy (the “Policy”) relating to the Bonds referenced above (the “Bonds”) issued by or on behalf of the Member. To keep this Commitment in effect after the Expiration Date set forth above, a written request for renewal must be submitted to BAM prior to such Expiration Date. BAM reserves the right to grant or deny a renewal in its sole discretion.

THE MUNICIPAL BOND INSURANCE POLICY SHALL BE ISSUED IF THE FOLLOWING CONDITIONS ARE SATISFIED:

1. The Bonds (i.e. the Loan Payments) shall be authorized as a Parity Obligation within the meaning of the Ordinance authorizing the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2020A (the “2020A Bonds”). The documents to be executed and delivered in connection with the issuance and sale of the Bonds (collectively, the “Security Documents”), shall not contain any untrue or misleading statement of a material fact and shall not fail to state a material fact necessary in order to make the information contained therein not misleading.
2. No event shall occur which would permit any underwriter or purchaser of the Bonds, otherwise required, not to be required to underwrite or purchase the Bonds on the date scheduled for the issuance and delivery thereof (the “Closing Date”).
3. As of the Closing Date, there shall have been no material adverse change in, as to or affecting (i) the Member or the Bonds, including, without limitation, the security for the Bonds or (ii) any disclosure document relating to the Bonds (including any financial statements and other

information included or incorporated by reference therein) (the “Disclosure Statement”), the Security Documents to be executed and delivered with respect to the Bonds, any project to be financed with the proceeds of the Bonds (if applicable), the legal opinions to be delivered in connection with the issuance and sale of the Bonds, or any other information submitted to BAM with respect to the issuance and sale of the Bonds, including information relating to the potential impact of the COVID-19 pandemic and the proposed debt service schedule of the Bonds, from information previously provided to BAM in writing.

4. The applicable Security Documents shall contain the document provisions included in the Ordinance for the 2020A Bonds and set forth in Exhibit A hereto and shall be in form and substance acceptable to BAM. No variation shall be permitted therefrom except as specifically approved by BAM in writing prior to the Closing Date.

5. The Bonds shall contain no reference to BAM, the Policy or the insurance evidenced thereby except as may be approved in writing by BAM. BOND PROOFS SHALL BE APPROVED IN WRITING BY BAM PRIOR TO PRINTING. The Bonds shall bear a Statement of Insurance in the form found on BAM’s website (www.buildamerica.com) and in Exhibit B hereto entitled “DOCUMENT, PRINTING AND DISCLOSURE INFORMATION FOR PUBLIC FINANCE TRANSACTIONS”.

6. Any Disclosure Statement shall contain the language provided by BAM and only such other references to BAM as BAM shall supply or approve in writing, and BAM shall be provided with final drafts of any preliminary and final Disclosure Statement at least two business days prior to printing/electronic posting.

7. BAM shall be provided with:

(a) Copies of all Security Document drafts prepared subsequent to the date of this Commitment (blacklined to reflect all revisions from previously reviewed drafts) for review and approval. Final drafts of such documents shall be provided at least three (3) business days prior to the issuance of the Policy, unless BAM shall agree in writing to a shorter period. Copies of all drafts of the Security Documents shall be delivered to the BAM contacts specified in Exhibit 1.

(b) Copies of any consulting reports, feasibility studies, rate reports, engineer’s reports or similar expert reports for review and approval, along with any revisions thereto (blacklined to reflect all revisions from previously reviewed drafts). Final drafts of such documents shall be provided at least three (3) business days prior to the issuance of the Policy, unless BAM shall agree in writing to a shorter period.

(c) The amortization schedule for, and final maturity date of, the Bonds, which schedule shall be acceptable to BAM. Please be aware that BAM will only insure fixed rate Bonds.

(d) A No-Litigation Certificate in form and substance satisfactory to BAM and a description of any material pending litigation relating to the Member or the Bonds and any opinions BAM shall request in connection therewith.

(e) A certificate, in form and substance satisfactory to BAM, certifying, among other things, that (i) there has been no material change in, as to or affecting the Bonds or the Member's financial position from and after the date of the financial statements provided to BAM and (ii) all information supplied by or on behalf of the Member remains true and correct in all material respects.

(f) Executed copies of all Security Documents, any Disclosure Statement and the various legal opinions delivered in connection with the issuance and sale of the Bonds (which shall be dated the Closing Date and which, except for the opinions of counsel relating to the adequacy of disclosure, shall be addressed to BAM or accompanied by a letter of such counsel permitting BAM to rely on such opinion as if such opinion were addressed to BAM), including, without limitation, the unqualified approving opinion of bond counsel, in form and substance satisfactory to BAM. The foregoing shall be in form and substance acceptable to BAM. (For your information, the form of legal opinion, primary market disclosure certificate and officer's certificate to be delivered by BAM at Closing is attached hereto as Exhibit C.)

(g) Evidence of wire transfer in federal funds of an amount equal to the Insurance Payment, unless alternative arrangements for the payment of such amount acceptable to BAM have been made prior to the Closing Date.

8. Parity Bonds must have an underlying, long-term rating of at least:

AA-	Standard and Poor's
NR	Moody's Investors Service

9. Promptly, but in no event more than thirty (30) days after the Closing Date, BAM shall receive two (2) CD-ROMs, which contain the final closing transcript of proceedings or if CD-ROMs are not available, such other electronic form as BAM shall accept.

10. To maintain this commitment until the Expiration Date set forth above, BAM must receive a copy of the signature page of this Commitment fully executed by an authorized officer of the undersigned within ten (10) days after the date of this Commitment.

11. The Issuer shall agree to provide BAM with all notices and other information it is obligated to provide under its Continuing Disclosure Undertaking for the 2020A Bonds even if such bonds are no longer outstanding and (ii) to the purchasers, holders of Insured Obligations or the Trustee or Paying Agent under the Security Documents and in each case, and BAM shall be entitled to enforce such obligation.

REPRESENTATION AND AGREEMENT BY BAM

(a) BAM is a mutual insurance corporation organized under the laws of, and domiciled in, the State of New York.

(b) BAM covenants that it will only insure obligations of states, political subdivisions, an integral part of states or political subdivisions or entities otherwise eligible for the exclusion of

income under Section 115 of the Internal Revenue Code of 1986, as amended, or any successor thereto.

(c) BAM covenants that it will not seek to convert to a stock insurance corporation.

(d) The issuance of the Policy qualifies the Member as a member of BAM until the Bonds are no longer outstanding. As a member of BAM, the Member is entitled to certain rights and privileges as provided in BAM's charter and by-laws and as may otherwise be provided under New York law, including the right to receive dividends if and when declared by BAM's Board of Directors. No dividends have been paid to date, and BAM has no current expectation that any dividends will be paid.

(e) The Policy is non-assessable and creates no contingent mutual liability.

(f) Refundings.

If (1) the Security Documents relating to the Bonds permit a legal defeasance (such that the bonds are no longer treated as outstanding under the Security Documents), (2) refunding bonds ("Refunding Bonds") will be issued for the purpose of legally defeasing such then outstanding BAM-insured Bonds (in this context, the "Refunded Bonds") and (3) upon their issuance (A) such Refunding Bonds have a final maturity date that is not later than the final Maturity Date of the Refunded Bonds, (B) the average annual debt service on the Refunding Bonds does not exceed the average annual debt service on the Refunded Bonds, and (C) the net proceeds of such Refunding Bonds are applied solely towards the legal defeasance of the Refunded Bonds and related costs of issuance, then, if BAM is requested to, and in its sole discretion determines to, offer a municipal bond insurance policy covering the Refunding Bonds (the "Refunding Policy") BAM will credit the then available Member Surplus Contribution for the Refunded Bonds against the insurance payment then charged with respect to the Refunding Bonds (proportionate to the amount of Refunding Bonds insured by BAM). If the Security Documents are silent on the matter of a legal defeasance, BAM may, in its sole and absolute discretion, accept such certificates, opinions and reports from or on behalf of the Member in connection with the issuance of such Refunding Bonds in order to establish to its satisfaction that the Refunding Bonds will be issued to retire the outstanding Refunded Bonds and that the Refunding Bonds comply with the criteria

set forth in clause (3) of the preceding sentence for the purpose of determining whether a supplemental Member Surplus Contribution is or is not required to be made at that time.

**BUILD AMERICA MUTUAL
ASSURANCE COMPANY**

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of loops and a vertical line.

Authorized Officer

March 25, 2022

Date

BAM's Legal Entity Identifier (LEI) # is 254900BWZ9EFP17ESA37

AGREED AND ACCEPTED

1. The undersigned agrees and accepts the conditions set forth above and further agrees that (i) if the Bonds (and any of the Bonds to be issued on the same date and for which BAM has issued a commitment) are insured by a policy of municipal bond insurance, such insurance shall be provided by BAM in accordance with the terms of this Commitment; (ii) it has made an independent investigation and decision as to whether to insure the payment when due of the principal of and interest on the Bonds and whether the Policy is appropriate or proper for it based upon its judgment and upon advice from such legal and financial advisers as it has deemed necessary; (iii) BAM has not made, and therefore it is not relying on, any recommendation from BAM that the Bonds be insured or that a Policy be obtained, it being understood and agreed that any communications from BAM (whether written or oral) referring to, containing information about or negotiating the terms and conditions of the Policy, and any related insurance document or the documentation governing the Bonds, do not constitute a recommendation to insure the Bonds or obtain the Policy; (iv) the undersigned acknowledges that BAM has not made any representation, warranty or undertaking, and has not given any assurance or guaranty, in each case, expressed or implied, as to its future financial strength or the rating of BAM's financial strength by the rating agency; (v) the undersigned acknowledges that a credit or claims-paying rating of BAM assigned by a Rating Agency reflects only the views of, and an explanation of the significance of any such rating may be obtained only from, the assigning Rating Agency, any such rating may change or be suspended, placed under review or withdrawn by such Rating Agency if circumstances so warrant, and BAM compensates a Rating Agency to maintain a credit or claims-paying ability rating thereon, but such payment is not in exchange for any specific rating or for a rating within any particular range; (vi) the undersigned acknowledges that BAM may in its sole and absolute discretion at any time request that a Rating Agency withdraw any rating maintained in respect of BAM; and (vii) BAM has made no representation that any dividend will be declared or paid while the Bonds are outstanding, the undersigned has no reason for expecting that any dividend will be declared or paid and the potential receipt of any dividend was not a reason for acquiring the Policy. Notwithstanding anything to the contrary set forth herein, upon issuance of the Policy, the provisions set forth under subparagraphs (ii) through (vii) above and the representations and agreements of BAM shall survive the expiration or termination of this Commitment.

2. The undersigned member hereby appoints Jeffrey Fried, General Counsel of Build America Mutual Assurance Company ("Build America"), as proxy with the power to appoint his substitute, and hereby authorizes him to represent and to cast all of the votes to which the undersigned is entitled to cast as of the record date for the annual meeting of Build America members to be held on Tuesday, April 25, 2022, or at any adjournment or postponement thereof. This proxy is solicited on behalf of the management of Build America and will empower the holder to vote on the undersigned member's behalf for the election of members of the Board of Directors and such other business as may properly come before said annual meeting. This proxy can be revoked by giving Build America written notice of revocation (by email to generalcounsel@buildamerica.com, or by U.S. mail or private carrier to General Counsel, Build America, 200 Liberty Street, New York, NY 10281) received by Build

America on or before April 21, 2023. This proxy may also be revoked if the undersigned member attends the annual meeting and chooses to vote in person.

CITY OF WICHITA, KANSAS

By: _____
Authorized Officer

Date

EXHIBIT A

DOCUMENT PROVISIONS

**GENERAL REVENUE BOND TRANSACTION DOCUMENT
PROVISIONS**

The following terms and provisions (the “Insurer Provisions”) shall be incorporated into the Security Documents. If the Insurer Provisions are attached to any of the Security Document as an exhibit, such Security Document shall include a provision that incorporates by reference the Insurer Provisions directly into the Security Documents. The Insurer Provisions shall control and supersede any conflicting or inconsistent provisions in the Security Documents.

- 1) Notice and Other Information to be given to BAM. The [Issuer] [Obligor] will provide BAM with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Undertaking for the 2020A Bonds even if such bonds are no longer outstanding and (ii) to the holders of Insured Obligations or the Trustee under the Security Documents.

The notice address of BAM is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. _____, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com. In each case in which notice or other communication refers to an event of default or a claim on the Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate “URGENT MATERIAL ENCLOSED.”

- 2) Defeasance. The investments in the defeasance escrow relating to Insured Obligation shall be limited to non-callable, direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, or as otherwise maybe authorized under State law and approved by BAM.

At least (three) 3 Business Days prior to any defeasance with respect to the Insured Obligations, the Issuer shall deliver to BAM draft copies of an escrow agreement, an opinion of bond counsel regarding the validity and enforceability of the escrow agreement and the defeasance of the Insured Obligations, a verification report (a “Verification Report”) prepared by a nationally recognized independent financial analyst or firm of certified public accountants regarding the sufficiency of the escrow fund. Such opinion and Verification Report shall be addressed to BAM and shall be in form and substance satisfactory to BAM. In addition, the escrow agreement shall provide that:

- a) Any substitution of securities following the execution and delivery of the escrow

agreement shall require the delivery of a Verification Report, an opinion of bond counsel that such substitution will not adversely affect the exclusion (if interest on the Insured Obligations is excludable) from gross income of the holders of the Insured Obligations of the interest on the Insured Obligations for federal income tax purposes and the prior written consent of BAM, which consent will not be unreasonably withheld.

- b) The [Issuer] [Obligor] will not exercise any prior optional redemption of Insured Obligations secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding bonds, and (ii) as a condition to any such redemption there shall be provided to BAM a Verification Report as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following any such redemption.
- c) The [Issuer] [Obligor] shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of BAM.

3) Trustee and Paying Agent.

- a) BAM shall receive prior written notice of any name change of the trustee (the “Trustee”) or, if applicable, the paying agent (the “Paying Agent”) for the Insured Obligations or the resignation or removal of the Trustee or, if applicable, the Paying Agent. Any Trustee must be (A) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least \$250 million of assets, (B) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least \$1 billion of assets, or (C) otherwise approved by BAM in writing.
- b) No removal, resignation or termination of the Trustee or, if applicable, the Paying Agent shall take effect until a successor, meeting the requirements above or acceptable to BAM, shall be qualified and appointed.

4) Amendments, Supplements and Consents. BAM’s prior written consent is required for all amendments and supplements to the Security Documents, with the exceptions noted below. The [Issuer] [Obligor] shall send copies of any such amendments or supplements to BAM and the rating agencies which have assigned a rating to the Insured Obligations.

- a) *Consent of BAM.* Any amendments or supplements to the Security Documents shall require the prior written consent of BAM with the exception of amendments or supplements:

- i. To cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in the transaction documents or in any supplement thereto, or
 - ii. To grant or confer upon the holders of the Insured Obligations any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the holders of the Insured Obligations, or
 - iii. To add to the conditions, limitations and restrictions on the issuance of bonds or other obligations under the provisions of the Security Documents other conditions, limitations and restrictions thereafter to be observed, or
 - iv. To add to the covenants and agreements of the [Issuer/Obligor] in the Security Documents other covenants and agreements thereafter to be observed by the [Issuer/Obligor] or to surrender any right or power therein reserved to or conferred upon the [Issuer/Obligor].
 - v. To issue additional parity debt in accordance with the requirements set forth in the Security Documents (unless otherwise specified herein).
- b) *Consent of BAM in Addition to Bondholder Consent.* Any amendment, supplement, modification to, or waiver of, any of the Security Documents that requires the consent of holders of the Insured Obligations or adversely affects the rights or interests of BAM shall be subject to the prior written consent of BAM.
- c) *Insolvency.* Any reorganization or liquidation plan with respect to the Issuer [or Obligor] must be acceptable to BAM. The Trustee and each owner of the Insured Obligations hereby appoint BAM as their agent and attorney-in-fact with respect to the Insured Obligations and agree that BAM may at any time during the continuation of any proceeding by or against the Issuer or Obligor under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, the Trustee and each owner of the Insured Obligations delegate and assign to BAM, to the fullest extent permitted by law, the rights of the Trustee and each owner of the Insured Obligations with respect to the Insured Obligations in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.
- d) *Control by BAM Upon Default.* Anything in the Security Documents to the contrary notwithstanding, upon the occurrence and continuance of a default or an event of

default, BAM shall be entitled to control and direct the enforcement of all rights and remedies granted to the holders of the Insured Obligations or the Trustee or Paying Agent for the benefit of the holders of the Insured Obligations under any Security Document. No default or event of default may be waived without BAM's written consent.

- e) *BAM as Owner.* Upon the occurrence and continuance of a default or an event of default, BAM shall be deemed to be the sole owner of the Insured Obligations for all purposes under the Security Documents, including, without limitations, for purposes of exercising remedies and approving amendments.
- f) *Consent of BAM for acceleration.* BAM's prior written consent is required as a condition precedent to and in all instances of acceleration.
- g) *Grace Period for Payment Defaults.* No grace period shall be permitted for payment defaults on the Insured Obligations. No grace period for a covenant default shall exceed 30 days without the prior written consent of BAM.
- h) *Special Provisions for Insurer Default.* If an Insurer Default shall occur and be continuing, then, notwithstanding anything in paragraphs 4(a)-(e) above to the contrary, (1) if at any time prior to or following an Insurer Default, BAM has made payment under the Policy, to the extent of such payment BAM shall be treated like any other holder of the Insured Obligations for all purposes, including giving of consents, and (2) if BAM has not made any payment under the Policy, BAM shall have no further consent rights until the particular Insurer Default is no longer continuing or BAM makes a payment under the Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, "Insurer Default" means: (A) BAM has failed to make any payment under the Policy when due and owing in accordance with its terms; or (B) BAM shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of BAM (including without limitation under the New York Insurance Law).

5) Loan/Lease/Financing Agreement.

- a) The security for the Insured Obligations shall include a pledge and assignment of

any agreement with any underlying obligor that is a source of payment for the Insured Obligations (a “Financing Agreement”) and a default under any Financing Agreement shall constitute an Event of Default under the Security Documents. In accordance with the foregoing, any such Financing Agreement is hereby pledged and assigned to the Trustee for the benefit of the holders of the Insured Obligations.

- b) Any payments by the Obligor under the Financing Agreement that will be applied to the payment of debt service on the Insured Obligations shall be made directly to the Trustee at least fifteen (15) days prior to each debt service payment date for the Insured Obligations.
- 6) BAM As Third Party Beneficiary. BAM is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.
- 7) Payment Procedure Under the Policy.

In the event that principal and/or interest due on the Insured Obligations shall be paid by BAM pursuant to the Policy, the Insured Obligations shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of BAM, and BAM shall be subrogated to the rights of such registered owners.

In the event that on the second (2nd) business day prior to any payment date on the Insured Obligations, the Paying Agent or Trustee has not received sufficient moneys to pay all principal of and interest on the Insured Obligations due on such payment date, the Paying Agent or Trustee shall immediately notify BAM or its designee on the same business day by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent or Trustee shall so notify BAM or its designee.

In addition, if the Paying Agent or Trustee has notice that any holder of the Insured Obligations has been required to disgorge payments of principal of or interest on the Insured Obligations pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then the Paying Agent or Trustee shall notify BAM or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of BAM.

The Paying Agent or Trustee shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Insured Obligations as follows:

- a) If there is a deficiency in amounts required to pay interest and/or principal on the

Insured Obligations, the Paying Agent or Trustee shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holders of the Insured Obligations in any legal proceeding related to the payment and assignment to BAM of the claims for interest on the Insured Obligations, (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment from BAM with respect to the claims for interest so assigned, (iii) segregate all such payments in a separate account (the “BAM Policy Payment Account”) to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to such respective holders; and

- b) If there is a deficiency in amounts required to pay principal of the Insured Obligations, the Paying Agent or Trustee shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holder of the Insured Obligations in any legal proceeding related to the payment of such principal and an assignment to BAM of the Insured Obligations surrendered to BAM, (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment therefore from BAM, (iii) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to such holders.

The Trustee shall designate any portion of payment of principal on Insured Obligations paid by BAM, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Obligations registered to the then current holder, whether DTC or its nominee or otherwise, and shall issue a replacement Insured Obligation to BAM, registered in the name directed by BAM, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Insured Obligation shall have no effect on the amount of principal or interest payable by the Issuer on any Insured Obligation or the subrogation or assignment rights of BAM.

Payments with respect to claims for interest on and principal of Insured Obligations disbursed by the Paying Agent or Trustee from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such Insured Obligations, and BAM shall become the owner of such unpaid Insured Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. The Security Documents shall not be discharged or terminated unless all amounts due or to become due to BAM have been paid in full or duly provided for.

Irrespective of whether any such assignment is executed and delivered, the Issuer, [Obligor] and the Paying Agent and Trustee agree for the benefit of BAM that:

- a) They recognize that to the extent BAM makes payments directly or indirectly (*e.g.*, by paying through the Paying Agent or Trustee), on account of principal of or interest on the Insured Obligations, BAM will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer/Obligor, with interest thereon, as provided and solely from the sources stated in the Security Documents and the Insured Obligations; and
 - b) They will accordingly pay to BAM the amount of such principal and interest, with interest thereon as provided in the transaction documents and the Insured Obligations, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Insured Obligations to holders, and will otherwise treat BAM as the owner of such rights to the amount of such principal and interest.
- 8) Additional Payments. The [Issuer] [Obligor] agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of the Security Documents ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of BAM spent in connection with the actions described in the preceding sentence. The [Issuer] [Obligor] agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

Notwithstanding anything herein to the contrary, the [Issuer][Obligor] agrees to pay to BAM (i) a sum equal to the total of all amounts paid by BAM under the Policy ("BAM Policy Payment"); and (ii) interest on such BAM Policy Payments from the date paid by BAM until payment thereof in full by the [Issuer][Obligor], payable to BAM at the Late Payment Rate per annum (collectively, "BAM Reimbursement Amounts") compounded semi-annually.

Notwithstanding anything to the contrary, including without limitation the post default application of revenue provisions, BAM Reimbursement Amounts and Administrative Costs shall be, and the [Issuer][Obligor] hereby covenants and agrees that the BAM Reimbursement Amounts and Administrative Costs are, solely payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Insured Obligations on a parity with debt service due on the Insured Obligations.

- 9) Debt Service Reserve Fund. The prior written consent of BAM shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Amounts on deposit in the Debt Service Reserve

Fund shall be applied solely to the payment of debt service due on the Insured Obligations.

- 10) Exercise of Rights by BAM. The rights granted to BAM under the Security Documents to request, consent to or direct any action are rights granted to BAM in consideration of its issuance of the Policy. Any exercise by BAM of such rights is merely an exercise of the BAM's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the Insured Obligations and such action does not evidence any position of BAM, affirmative or negative, as to whether the consent of the holders of the Insured Obligations or any other person is required in addition to the consent of BAM.
- 11) BAM shall be entitled to pay principal or interest on the Insured Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Policy) and any amounts due on the Insured Obligations as a result of acceleration of the maturity thereof in accordance with the Security Documents, whether or not BAM has received a claim upon the Policy.
- 12) So long as the Insured Obligations are outstanding or any amounts are due and payable to BAM, the [Issuer/Obligor] shall not sell, lease, transfer, encumber or otherwise dispose of the [System] or any material portion thereof, except upon obtaining the prior written consent of BAM.
- 13) No contract shall be entered into or any action taken by which the rights of BAM or security for or source of payment of the Insured Obligations may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of BAM.
- 14) If an event of default occurs under any agreement pursuant to which any Obligation of the [Issuer/Obligor] has been incurred or issued and that permits the holder of such Obligation or trustee to accelerate the Obligation or otherwise exercise rights or remedies that are adverse to the interest of the holders of the Insured Obligations or BAM, as BAM may determine in its sole discretion, then an event of default shall be deemed to have occurred under this [Indenture] and the related Security Documents for which BAM or the Trustee, at the direction of BAM, shall be entitled to exercise all available remedies under the Security Documents, at law and in equity. For purposes of the foregoing "Obligation" shall mean any bonds, loans, certificates, installment or lease payments or similar obligations that are payable and/or secured on a parity or subordinate basis to the Insured Obligations.
- 15) Definitions.

"BAM" shall mean Build America Mutual Assurance Company, or any successor thereto.

"Insured Obligations" shall mean the [bonds].

“Issuer” shall mean the [Authority].

“Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in The City of New York, New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 5%, and (ii) the then applicable highest rate of interest on the Insured Obligations and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates including K.S.A. 10-1009. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as BAM, in its sole and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to BAM shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

“Obligor” shall mean the [_____].

“Policy” shall mean the Municipal Bond Insurance Policy issued by BAM that guarantees the scheduled payment of principal of and interest on the Insured Obligations when due.

“Security Documents” shall mean the resolution, trust agreement, indenture, ordinance, loan agreement, lease agreement, bond, note, certificate and/or any additional or supplemental document executed in connection with the Insured Obligations.

EXHIBIT B

DOCUMENT, PRINTING AND DISCLOSURE INFORMATION FOR PUBLIC FINANCE TRANSACTIONS



BUILD AMERICA MUTUAL ASSURANCE COMPANY

DOCUMENT, PRINTING AND DISCLOSURE INFORMATION FOR PUBLIC FINANCE TRANSACTIONS

This information is intended for use by bond counsel, the underwriters, financial advisors, printers and preparers of municipal bond offerings that will be insured in whole or in part by Build America Mutual Assurance Company ("BAM").

Prior to any reference to BAM in your marketing efforts, including, but not limited to any preliminary or final Official Statement and any rating agency presentation, in respect of a BAM-insured issue, BAM must receive an executed copy of its Commitment Letter. Blacklined copies of each draft of each transaction document, preliminary and final official statements with Appendices, and bond form(s) should be delivered to BAM for review and comment with reasonable opportunity to submit any comments prior to printing or execution, but in any event not less than three business days prior to execution. Such documents shall be delivered to the BAM attorney working on the transaction. If you are uncertain of the proper person to whom to deliver the documents, please email the documents to: documents@buildamerica.com. Please identify the issuer, obligor and issue name in the subject line of the email.

BAM will deliver to Bond Counsel, at the pre-closing for any such municipal bond offering (such offering to the extent insured by BAM, the "Insured Obligations"), assuming the requirements of the Commitment Letter have been met,

- an opinion of counsel as to the validity of the policy,
- a disclosure, no default and tax certificate of BAM, the executed policy and
- other certificates, if any, required in the transaction.

Prior to closing, BAM will obtain the rating letter from Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, relating to any Insured Obligations. Note that any questions with regards to rating agency fees should be directed to the rating agency.

INDEX

	<u>EXHIBIT NO.</u>
<u>DIRECTORY</u>	
Legal Department Directory	1
<u>OFFICIAL STATEMENT</u>	
BAM Disclosure Information (for inclusion in the Official Statement)	2
Specimen: Municipal Bond Insurance Policy	3
<u>BOND FORM</u>	
Statement of Insurance (Language for Bond Form)	4
<u>WIRE INSTRUCTIONS</u>	
Procedures For Premium Payment (including wire-transfer instructions)	5

BAM DIRECTORY

<u>Name</u>	<u>Title</u>	<u>Telephone</u>	<u>Email</u>
<u>BAM ATTORNEYS</u>			
Jill Greiss	Counsel	212-235-2515	jgreiss@buildamerica.com
<u>CLOSING COORDINATORS</u>			
Nolan Miller		212-235-2511	nmiller@buildamerica.com
<u>BAM ANALYST</u>			
Mark Capel		415-858-1007	mcapell@buildamerica.com

**BUILD AMERICA MUTUAL ASSURANCE COMPANY
("BAM")
DISCLOSURE INFORMATION
(FOR INCLUSION IN THE OFFICIAL STATEMENT)**

The following are BAM's requirements for printing the preliminary and final official statements:

1. Both the preliminary and final official statements must contain the information set forth in these Exhibits and BAM must be provided with final drafts for its approval and sign off thereon at least two business days prior to the printing thereof;
2. Any changes made to the BAM Disclosure Information for inclusion in the preliminary and final official statements must first be approved by BAM, and
3. BAM must receive an electronic copy of the final official statement seven (7) days prior to closing, unless BAM shall have agreed to some shorter period.

TO BE PRINTED ON THE COVER OF THE OFFICIAL STATEMENT:

The following language should be used when insuring:

1. THE ENTIRE ISSUE:

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by **BUILD AMERICA MUTUAL ASSURANCE COMPANY**.

2. CAPITAL APPRECIATION BONDS:

The scheduled payment of principal of (or, in the case of Capital Appreciation Bonds, the accreted value) and interest on the Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by **BUILD AMERICA MUTUAL ASSURANCE COMPANY**.

3. PARTIAL MATURITIES (LESS THAN ENTIRE ISSUE):

The scheduled payment of principal of and interest on the Bonds maturing on _____ of the years ____ through _____, inclusive, with CUSIP #(s) _____ (collectively, the "Insured Bonds"), when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Insured Bonds by **BUILD AMERICA MUTUAL ASSURANCE COMPANY**.

4. CERTIFICATES OR NOTES:

Change all references from the Bonds to Certificates or Notes wherever necessary, but **DO NOT** change the reference to the policy from Municipal Bond Insurance Policy.

**PRINTER'S NOTE: USE BUILD AMERICA MUTUAL ASSURANCE COMPANY
LOGO AND INK #PMS BLUE 2736; REDS 199, 201 AND 1817.**

THE LOGO MAY BE OBTAINED FROM BAM'S WEBSITE

WWW.BUILDAMERICA.COM

**THE LOGO MAY BE OBTAINED FROM BAM'S WEBSITE
TO BE PRINTED IN THE BODY OF THE OFFICIAL STATEMENT OR AS AN EXHIBIT**

USE THE FOLLOWING LANGUAGE WHEN INSURING THE ENTIRE ISSUE:

NOTE: The language under the subheading “Bond Insurance Policy” should be modified when insuring Capital Appreciation Bonds, Partial Maturities (less than the entire issue), Certificates and/or Notes.

BOND INSURANCE

BOND INSURANCE POLICY

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy for the Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

BAM is a New York domiciled mutual insurance corporation and is licensed to conduct financial guaranty insurance business in all fifty states of the United States and the District of Columbia. BAM provides credit enhancement products solely to issuers in the U.S. public finance markets. BAM will only insure obligations of states, political subdivisions, integral parts of states or political subdivisions or entities otherwise eligible for the exclusion of income under section 115 of the U.S. Internal Revenue Code of 1986, as amended. No member of BAM is liable for the obligations of BAM.

The address of the principal executive offices of BAM is: 200 Liberty Street, 27th Floor, New York, New York 10281, its telephone number is: 212-235-2500, and its website is located at: www.buildamerica.com.

BAM is licensed and subject to regulation as a financial guaranty insurance corporation under the laws of the State of New York and in particular Articles 41 and 69 of the New York Insurance Law.

BAM's financial strength is rated “AA/Stable” by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC (“S&P”). An explanation of the significance of the rating and current reports may be obtained from S&P at www.standardandpoors.com. The rating of BAM should be evaluated independently. The rating reflects the S&P's current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The above rating is not a recommendation to buy, sell or hold the Bonds, and such rating is subject to revision or withdrawal at any time by S&P, including withdrawal initiated at the request of BAM in its sole discretion. Any downward revision or withdrawal of the above rating may have an adverse effect on the market price of the Bonds. BAM only guarantees scheduled principal and scheduled interest payments payable by the issuer of the Bonds on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the Policy), and BAM does not guarantee the market price or liquidity of the Bonds, nor does it guarantee that the rating on the Bonds will not be revised or withdrawn.

Capitalization of BAM

BAM's total admitted assets, total liabilities, and total capital and surplus, as of December 31, 2019 and as prepared in accordance with statutory accounting practices prescribed or permitted by the New York State Department of Financial Services were \$534.9 million, \$132.5 million and \$402.4 million, respectively.

BAM is party to a first loss reinsurance treaty that provides first loss protection up to a maximum of 15% of the par amount outstanding for each policy issued by BAM, subject to certain limitations and restrictions.

BAM's most recent Statutory Annual Statement, which has been filed with the New York State Insurance Department and posted on BAM's website at www.buildamerica.com, is incorporated herein by reference and may be obtained, without charge, upon request to BAM at its address provided above (Attention: Finance Department). Future financial statements will similarly be made available when published.

BAM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "BOND INSURANCE".

Additional Information Available from BAM

Credit Insights Videos. For certain BAM-insured issues, BAM produces and posts a brief Credit Insights video that provides a discussion of the obligor and some of the key factors BAM's analysts and credit committee considered when approving the credit for insurance. The Credit Insights videos are easily accessible on BAM's website at buildamerica.com/creditisights/. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Credit Profiles. Prior to the pricing of bonds that BAM has been selected to insure, BAM may prepare a pre-sale Credit Profile for those bonds. These pre-sale Credit Profiles provide information about the sector designation (e.g. general obligation, sales tax); a preliminary summary of financial information and key ratios; and demographic and economic data relevant to the obligor, if available. Subsequent to closing, for any offering that includes bonds insured by BAM, any pre-sale Credit Profile will be updated and superseded by a final Credit Profile to include information about the gross par insured by CUSIP, maturity and coupon. BAM pre-sale and final Credit Profiles are easily accessible on BAM's website at buildamerica.com/obligor/. BAM will produce a Credit Profile for all bonds insured by BAM, whether or not a pre-sale Credit Profile has been prepared for such bonds. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Disclaimers. The Credit Profiles and the Credit Insights videos and the information contained therein are not recommendations to purchase, hold or sell securities or to make any investment decisions. Credit-related and other analyses and statements in the Credit Profiles and the Credit Insights videos are statements of opinion as of the date expressed, and BAM assumes no responsibility to update the content of such material. The Credit Profiles and Credit Insight videos are prepared by BAM; they have not been reviewed or approved by the issuer of or the underwriter for the Bonds, and the issuer and underwriter assume no responsibility for their content.

BAM receives compensation (an insurance premium) for the insurance that it is providing with respect to the Bonds. Neither BAM nor any affiliate of BAM has purchased, or committed to purchase, any of the Bonds, whether at the initial offering or otherwise.

The Bond Insurance language for the Official Statement under the subheading “Bond Insurance Policy” should be replaced with the following language when insuring:

1. CAPITAL APPRECIATION BONDS:

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy for the Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of (or, in the case of Capital Appreciation Bonds, the accreted value) and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

2. PARTIAL MATURITIES (LESS THAN THE ENTIRE ISSUE):

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy (the “Policy”) for the Bonds maturing on _____ of the years _____ through _____, inclusive, with CUSIP #'s____ (collectively, the “Insured Bonds”). The Policy guarantees the scheduled payment of principal of and interest on the Insured Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

3. CERTIFICATES OR NOTES:

Change all references from the Bonds to Certificates or Notes wherever necessary, but **DO NOT** change the reference to the policy from Municipal Bond Insurance Policy.

**TO BE PRINTED ON THE INSIDE COVER OF OFFICIAL STATEMENT
AS PART OF THE DISCLAIMER STATEMENT:**

Build America Mutual Assurance Company (“BAM”) makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading “Bond Insurance” and “Exhibit __ - Specimen Municipal Bond Insurance Policy”.

Specimen Municipal Bond Insurance Policy



MUNICIPAL BOND INSURANCE POLICY

ISSUER: [NAME OF ISSUER]

Policy No: _____

MEMBER: [NAME OF MEMBER]

BONDS: \$ _____ in aggregate principal
amount of [NAME OF TRANSACTION]
[and maturing on]

Effective Date: _____

Risk Premium: \$ _____

Member Surplus Contribution: \$ _____

Total Insurance Payment: \$ _____

BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") for the Bonds named above (as set forth in the documentation providing for the issuance and securing of the Bonds), for the benefit of the Owners or, at the election of BAM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the first Business Day following the Business Day on which BAM shall have received Notice of Nonpayment, BAM will disburse (but without duplication in the case of duplicate claims for the same Nonpayment) to or for the benefit of each Owner of the Bonds, the face amount of principal of and interest on the Bonds that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by BAM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of such principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in BAM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by BAM is incomplete, it shall be deemed not to have been received by BAM for purposes of the preceding sentence, and BAM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, any of whom may submit an amended Notice of Nonpayment. Upon disbursement under this Policy in respect of a Bond and to the extent of such payment, BAM shall become the owner of such Bond, any appurtenant coupon to such Bond and right to receipt of payment of principal of or interest on such Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under such Bond. Payment by BAM either to the Trustee or Paying Agent for the benefit of the Owners, or directly to the Owners, on account of any Nonpayment shall discharge the obligation of BAM under this Policy with respect to said Nonpayment.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent (as defined herein) are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless BAM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration) and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment made to an Owner by or on behalf of the Issuer of principal or interest that is Due for Payment, which payment has been recovered from such Owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means delivery to BAM of a notice of claim and certificate, by certified mail, email or telecopy as set forth on the attached Schedule or other acceptable electronic delivery, in a form satisfactory to BAM, from and signed by an Owner, the Trustee or the Paying Agent, which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount, (d) payment instructions and (e) the date such claimed amount becomes or became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer, the Member or any other person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

BAM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee, the Paying Agent, the Member and the Issuer specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee, the Paying Agent, the Member or the Issuer (a) copies of all notices required to be delivered to BAM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to BAM and shall not be deemed received until received by both and (b) all payments required to be made by BAM under this Policy may be made directly by BAM or by the Insurer's Fiscal Agent on behalf of BAM. The Insurer's Fiscal Agent is the agent of BAM only, and the Insurer's Fiscal Agent shall in no event be liable to the Trustee, Paying Agent or any Owner for any act of the Insurer's Fiscal Agent or any failure of BAM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, BAM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to BAM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy. This Policy may not be canceled or revoked.

This Policy sets forth in full the undertaking of BAM and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. THIS POLICY IS ISSUED WITHOUT CONTINGENT MUTUAL LIABILITY FOR ASSESSMENT.

In witness whereof, BUILD AMERICA MUTUAL ASSURANCE COMPANY has caused this Policy to be executed on its behalf by its Authorized Officer.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

By: _____
Authorized Officer

Notices (Unless Otherwise Specified by BAM)

Email:

claims@buildamerica.com

Address:

200 Liberty Street, 27th floor

New York, New York 10281

Telecopy:

212-962-1524 (attention: Claims)

SPECIMEN

STATEMENT OF INSURANCE
(Language for the Bond Form)
This form is not to be included in the Official Statement.

The Bonds shall bear a Statement of Insurance in the following form.

The following language should be used when insuring

1. THE ENTIRE ISSUE:

Build America Mutual Assurance Company (“BAM”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bond to **{insert name of paying agent or trustee}, {city or county}, {state}**, or its successor, [as paying agent for the Bonds (the “Paying Agent”)] [as trustee for the Bonds (the “Trustee”)]. Said Policy is on file and available for inspection at the principal office of the [Paying Agent] [Trustee] and a copy thereof may be obtained from BAM or the [Paying Agent] [Trustee]. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. By its purchase of these Bonds, the owner acknowledges and consents (i) to the subrogation and all other rights of BAM as more fully set forth in the Policy and (ii) that upon the occurrence and continuance of a default or an event of default under the Resolution or this Bond, BAM shall be deemed to be the sole owner of the Bonds for all purposes and shall be entitled to control and direct the enforcement of all rights and remedies granted to the owners of the Bonds or the trustee, paying agent, registrar or similar agent for the benefit of such owners under the [Resolution/Ordinance/Indenture], at law or in equity.

2. CAPITAL APPRECIATION BONDS:

Build America Mutual Assurance Company (“BAM”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of (or, in the case of Capital Appreciation Bonds, the accreted value) and interest on this Bond to **{insert name of paying agent or trustee}, {city or county}, {state}**, or its successor, as [paying agent for the Bonds (the “Paying Agent”)] as trustee for the Bonds (the “Trustee”)]. Said Policy is on file and available for inspection at the principal office of the [Paying Agent] [Trustee] and a copy thereof may be obtained from BAM or the [Paying Agent] [Trustee]. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. By its purchase of these Bonds, the owner acknowledges and consents (i) to the subrogation and all other rights of BAM as more fully set forth in the Policy and (ii) that upon the occurrence and continuance of a default or an event of default under the Resolution or this Bond, BAM shall be deemed to be the sole owner of the Bonds for all purposes and shall be entitled to control and direct the enforcement of all rights and remedies granted to the owners of the Bonds or the trustee, paying agent, registrar or similar agent for the benefit of such owners under the [Resolution/Ordinance/Indenture], at law or in equity.

3. PARTIAL MATURITIES (LESS THAN ENTIRE ISSUE):

Build America Mutual Assurance Company (“BAM”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bonds maturing on _____ of the years _____ through _____, inclusive (the “Insured Bonds”), to **{insert name of paying agent or trustee}, {city or county}, {state}**, or its successor, [as paying agent for the Bonds (the “Paying Agent”)] [as trustee for the Bonds (the “Trustee”)]. Said Policy is on file and available for inspection at the principal office of the [Paying Agent] [Trustee] and a copy thereof may be obtained from BAM or the [Paying Agent] [Trustee]. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. By its purchase of these Bonds, the owner acknowledges and consents (i) to the subrogation and all other rights of BAM as more fully set forth in the Policy and (ii) that upon the occurrence and continuance of a default or an event of default under the Resolution or this Bond, BAM shall be deemed to be the sole owner of the Bonds for all purposes and shall be entitled to control and direct the enforcement of all rights and remedies granted to the owners of the Bonds or the trustee, paying agent, registrar or similar agent for the benefit of such owners under the [Resolution/Ordinance/Indenture], at law or in equity.

4. CERTIFICATES OR NOTES:

Change all references from the Bonds to Certificates or Notes wherever necessary, but **DO NOT** change the reference to the policy from Municipal Bond Insurance Policy.

PROCEDURES FOR PREMIUM PAYMENT TO BAM

This form is not to be included in the Official Statement.

BAM's issuance of its municipal bond insurance policy at bond closing is contingent upon payment and receipt of the premium. NO POLICY MAY BE RELEASED UNTIL PAYMENT OF SUCH AMOUNT HAS BEEN CONFIRMED. Set forth below are the procedures to be followed for confirming the amount of the premium to be paid and for paying such amount:

Upon determination of the final debt service schedule, email or fax such schedule to the appropriate BAM Underwriter

Alexander Vaisman

Phone No.: 415-858-1004

Email: avaisman@buildamerica.com

Confirm with the individual in our underwriting department that you are in agreement with respect to par and premium on the transaction prior to the closing date.

Payment Date: Date of Delivery of the Insured Bonds.

Method of Payment: Wire transfer of Federal Funds.

Wire Transfer Instructions:

Bank:	First Republic Bank
ABA#:	321081669
Acct. Name:	Build America Mutual Assurance Company
Account No.:	80001613703
Policy No.:	@@POLICY_NO@@ – (Include in OBI Field)

CONFIRMATION OF PREMIUM

BAM will accept as confirmation of the premium payment a wire transfer number and the name of the sending bank, to be communicated to the Closing Coordinator on the closing date:

Deneica Glenn	(212) 235-2552
Patrice James	(212) 235-2559
Claudette Littlejohn	(212) 235-2572
Nolan Miller	(212) 235-2511

EXHIBIT C

BAM LEGAL OPINION AND CERTIFICATE

[CLOSING DATE]

[ADDRESSEES (ISSUER, UNDERWRITER AND TRUSTEE)]

Re: Municipal Bond Insurance Policy No. [POLICY NO.] With Respect to
\$_____ [Name of Issuer] (the "Issuer")
_____ Bonds, Series _____ (the "Bonds")

Ladies and Gentlemen:

I am Counsel of Build America Mutual Assurance Company, a New York mutual insurance company ("BAM"). You have requested my opinion in such capacity as to the matters set forth below in connection with the issuance by BAM of its above-referenced policy (the "Policy"). In that regard, and for purposes of this opinion, I have examined such corporate records, documents and proceedings as I have deemed necessary and appropriate.

Based upon the foregoing, I am of the opinion that:

1. BAM is a mutual insurance company duly organized and validly existing under the laws of the State of New York and authorized to transact financial guaranty insurance business therein.
2. The Policy has been duly authorized, executed and delivered by BAM.
3. The Policy constitutes the valid and binding obligation of BAM, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, rehabilitation, moratorium and other similar laws affecting the enforceability of creditors' rights generally applicable in the event of the bankruptcy or insolvency of BAM and to the application of general principles of equity.
4. The issuance of the Policy qualifies [the Issuer] as a member of BAM until [the Bonds] are no longer outstanding. As a member of BAM, [the Issuer] is entitled to certain rights and privileges as provided in BAM's charter and by-laws and as may otherwise be provided under New York law. The Policy is non-assessable and creates no contingent mutual liability.

In addition, please be advised that I have reviewed the description of the Policy under the caption "BOND INSURANCE" in the official statement relating to the above-referenced Bonds dated [DATE] (the "Official Statement"). There has not come to my attention any information which would cause me to believe that the description of the Policy referred to above, as of the date of the Official Statement or as of the date of

this opinion, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Please be advised that I express no opinion with respect to any information contained in, or omitted from, "the Official Statement".

I am a member of the Bar of the State of New York, and do not express any opinion as to any law other than the laws of the State of New York.

This letter and the legal opinions herein are intended for the information solely of the addressees hereof and solely for the purposes of the transactions described in the Official Statement and are not to be relied upon by any other person or entity (including, without limitation, any person or entity that acquires bonds from an addressee of this letter.) I do not undertake to advise you of matters that may come to my attention subsequent to the date hereof that may affect the conclusions expressed herein.

Very truly yours,

**DISCLOSURE, NO DEFAULT AND TAX CERTIFICATE OF
BUILD AMERICA MUTUAL ASSURANCE COMPANY**

The undersigned hereby certifies on behalf of BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM"), in connection with the issuance by BAM of its Policy No. [POLICY NO.] (the "Policy") in respect of the [\$AMOUNT] [NAME OF TRANSACTION] (the "Bonds") that:

(i) The information set forth under the caption "BOND INSURANCE-BUILD AMERICA MUTUAL ASSURANCE COMPANY" in the official statement dated [DATE], relating to the Bonds (the "Official Statement") is true and correct;

(ii) BAM is not currently in default nor has BAM ever been in default under any policy or obligation guaranteeing the payment of principal of or interest on an obligation;

(iii) The Policy is an unconditional and recourse obligation of BAM (enforceable by or on behalf of the holders of the Bonds) to pay the scheduled principal of and interest on the Bonds when due in the event of Nonpayment by the Issuer (as set forth in the Policy);

(iv) The insurance payment (inclusive of the sum of the Risk Premium and the Member Surplus Contribution) (the "Insurance Payment") is solely a charge for the transfer of credit risk and was determined in arm's length negotiations and is required to be paid to BAM as a condition to the issuance of the Policy;

(v) BAM will, for federal income tax purposes, treat the Insurance Payment as solely in consideration for the insurance risk it assumes in the Policy and not as consideration for an investment in BAM or its assets;

(vi) No portion of such Insurance Payment represents an indirect payment of costs of issuance, including rating agency fees, other than fees paid by BAM to maintain its rating, which, together with all other overhead expenses of BAM, are taken into account in the formulation of its rate structure, or for the provision of additional services by BAM, or represents a direct or indirect payment for any goods or services provided to the Issuer (including the right to receive a dividend), or the direct or indirect payment for a cost, risk or other element that is not customarily borne by insurers of tax-exempt bonds (in transactions in which the guarantor has no involvement other than as a guarantor);

(vii) BAM is not providing any services in connection with the Bonds other than providing the Policy, and except for the Insurance Payment, BAM will not use any portion of the Bond proceeds;

(viii) Except for payments under the Policy in the case of Nonpayment by the Issuer, there is no obligation to pay any amount of principal or interest on the Bonds by BAM;

(ix) (a) BAM has not paid any dividends to date, (b) BAM's Board of Directors has resolved that BAM's priorities for surplus, as it accumulates, will be to preserve capital strength and claims paying resources for the benefit of its members and secondarily to

return value by reducing premiums charged for its insurance, and (c) BAM has no current expectation that any dividends will be paid;

(x) BAM does not expect that a claim or any other payment will be made on or with respect to the Policy or by BAM to the Issuer; and

(xi) Neither the Issuer nor any other Obligor is entitled to a refund of the Insurance Payment for the Policy in the event a Bond is retired before the final maturity date.

BAM makes no representation as to the nature of the interest to be paid on the Bonds or the treatment of the Policy under Section 1.148-4(f) of the Income Tax Regulations.

BUILD AMERICA MUTUAL
ASSURANCE COMPANY

Authorized Officer

Dated: [CLOSING DATE]

Primary Market Disclosure Certificate
[Bond Description] (the “Insured Bonds”)

For the benefit of _____ (the “Issuer”), and acknowledging that the Issuer will be relying on the contents hereof in addressing certain tax and disclosure items and for other matters, Build America Mutual Assurance Company (“Build America”) makes the following representations and warranties as of the date hereof:

1. Neither Build America nor any affiliate of Build America has purchased, or has committed to purchase, any of the Insured Bonds, whether at the initial offering or otherwise;
2. Neither Build America nor any affiliate of Build America has entered into any agreement or understanding regarding the purchase or sale of the Insured Bonds, except for the insurance policies that Build America has provided regarding payments due under the Insured Bonds and the documentation associated with said insurance policies.

For the purposes of this certificate, “affiliate of Build America” means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Build America.

[dated as of the closing date]

Build America Mutual Assurance Company

By

Authorized Officer

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: ZON2022-000011 – Zone Change from TF-3 Two-Family Residential to B Multi-Family Residential for Construction of Two Duplexes on Property Generally Located on the West Side of North Grove Avenue and One-Half Mile North of East 13th Street, 1701 North Grove (District I)

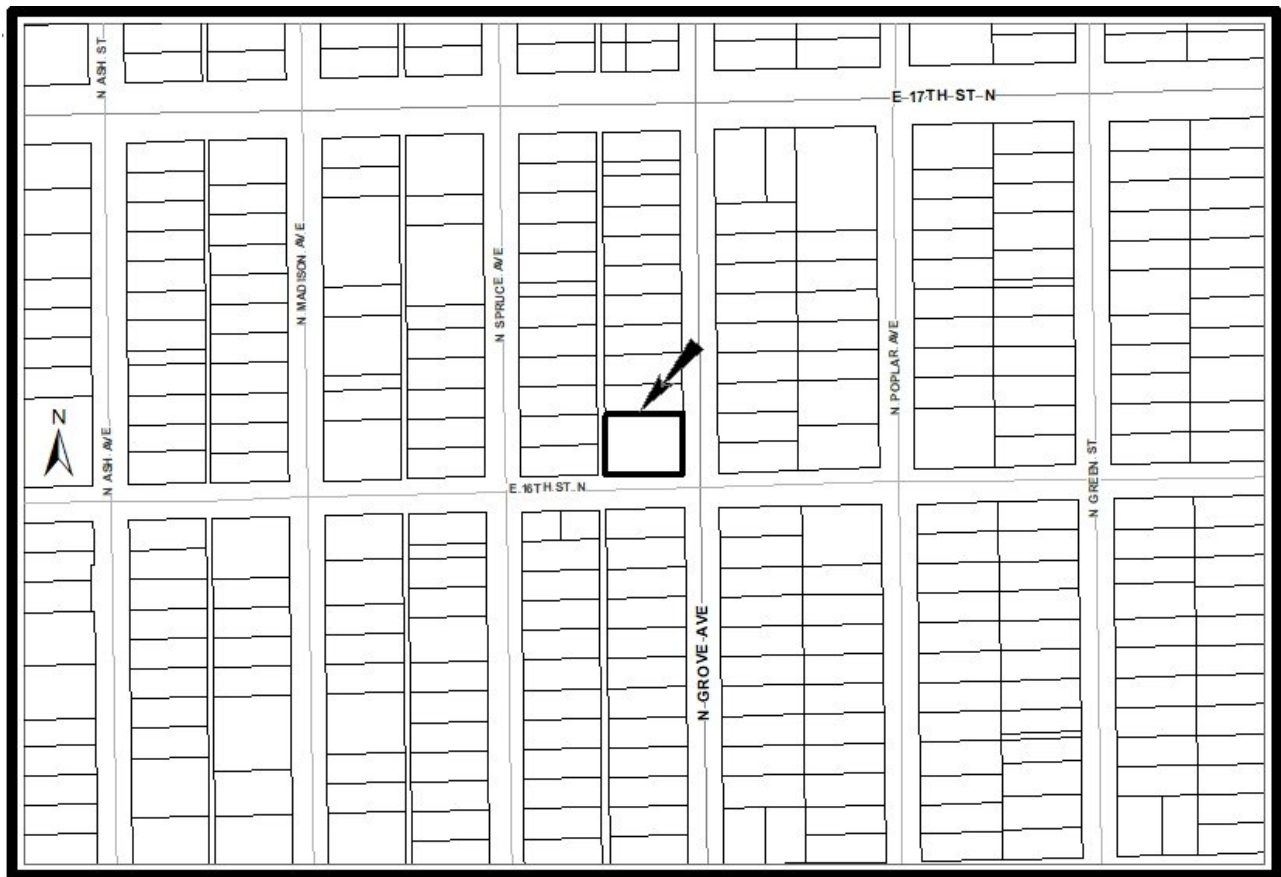
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to staff recommendation (8-2).

MAPD Staff Recommendations: Approve, subject to Protective Overlay #392.

DAB I Recommendations: Approve, subject to staff recommendation and requiring the design guidelines as part of the Protective Overlay (5-0).



BACKGROUND: The applicant requests B Multi-Family Residential zoning on 0.303 platted acres generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove). The subject site is currently zoned TF-3 Two-Family Residential. One duplex is currently under construction on the northern half of the property. The rezoning was not needed to begin construction on this duplex. The southern half of the property is vacant.

The property is 130 feet by 100 feet, twice the size of adjacent properties. The applicant plans to build two duplexes on the property, including the duplex under construction. The applicant's site plan depicts the proposed duplex that would be located on the corner of 16th Street and Grove Avenue. The duplexes will be required to meet the property development standards of the B Multi-Family Residential zoning district. These standards are shown below. The proposed duplex in the site plan meets these standards.

One reason the applicant has requested B Multi-Family zoning is due to the street side setback. In the B Multi-Family district, the street side setback is 5 feet as opposed to 15 feet in the TF-3 Two-Family zoning district. This smaller setback will allow the applicant to place two duplexes on the subject property. A comparison of the property development standards of the TF-3 district, the B district, and those shown on the applicant's site plan is shown below. The applicant meets all of the property development standards of the TF-3 district except the street side setback (height is not addressed by the applicant). Several properties along East 16th Street in the area have street side setbacks between three (3) and fifteen (15) feet. A street side setback of 7 feet fits the context of the area.

Property Development Standards

	TF-3 District	B District	Applicant's Site Plan
Minimum Lot Area (square feet) Duplex (lot area per unit)	3,000	580	6,500
Minimum Lot Width (feet)	35	-	50
Front Setback (feet)	25	20	25
Rear Setback (feet)	20	15	20
Interior Side Setback (feet)	6	5	6.9
Street Side Setback (feet)	15	5	7
Maximum Height (feet)	35	55	Not Addressed

The context of the area includes single and two-family homes with garages located in line with or behind the primary structure of the home. Staff recommends that the duplexes conform to the Wichita: Places for People design recommendations so that the duplexes fit the context of the area.

The properties north, south, east, and west of the subject property are zoned TF-3 Two-Family Residential and are developed with single-family dwellings. There are multiple properties zoned B Multi-Family in the area including on the block to the east and on the block to the west.

Analysis: On March 17, 2022, the Metropolitan Area Planning Commission (MAPC) recommended approval of the application (8-2), subject to Protective Overlay #392 as attached in the Supporting Documents. Duplex design guidelines were recommended, but not required. No members of the public spoke at this public hearing. Minutes from this meeting are attached.

On March 7, 2022, District Advisory Board (DAB) I recommended approval of the application, subject to staff recommendation and requiring the design guidelines as part of the Protective Overlay (5-0). No members of the public spoke at this public hearing. A report from this meeting is attached.

No protest petitions were received for the requested zoning change.

Adopting the findings of the MAPC and approving B Multi-Family Residential zoning with the attached Protective Overlay #392 can be approved with a simple majority vote (4 of 7 votes). Adopting the findings of DAB I and approving B Multi-Family Residential zoning with the attached Protective Overlay #392 that includes the design requirements can be approved with a two-thirds vote (5 of 7 votes). The request can be returned to MAPC with a simple majority vote (4 of 7 votes).

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change and Protective Overlay #392, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes).

Alternatives:

1. Approve the request for B Multi-Family Residential Zoning and Protective Overlay #392 with the Duplex design guidelines as a requirement (requires 5 of 7 votes); or
2. Deny the zone change (requires 5 of 7 votes); or
3. Return the case to MAPC for additional consideration (requires 4 of 7 votes).

Attachments:

1. Supporting Documents
2. MAPC Minutes
3. MAPC Staff Report
4. DAB 1 Report
5. Ordinance

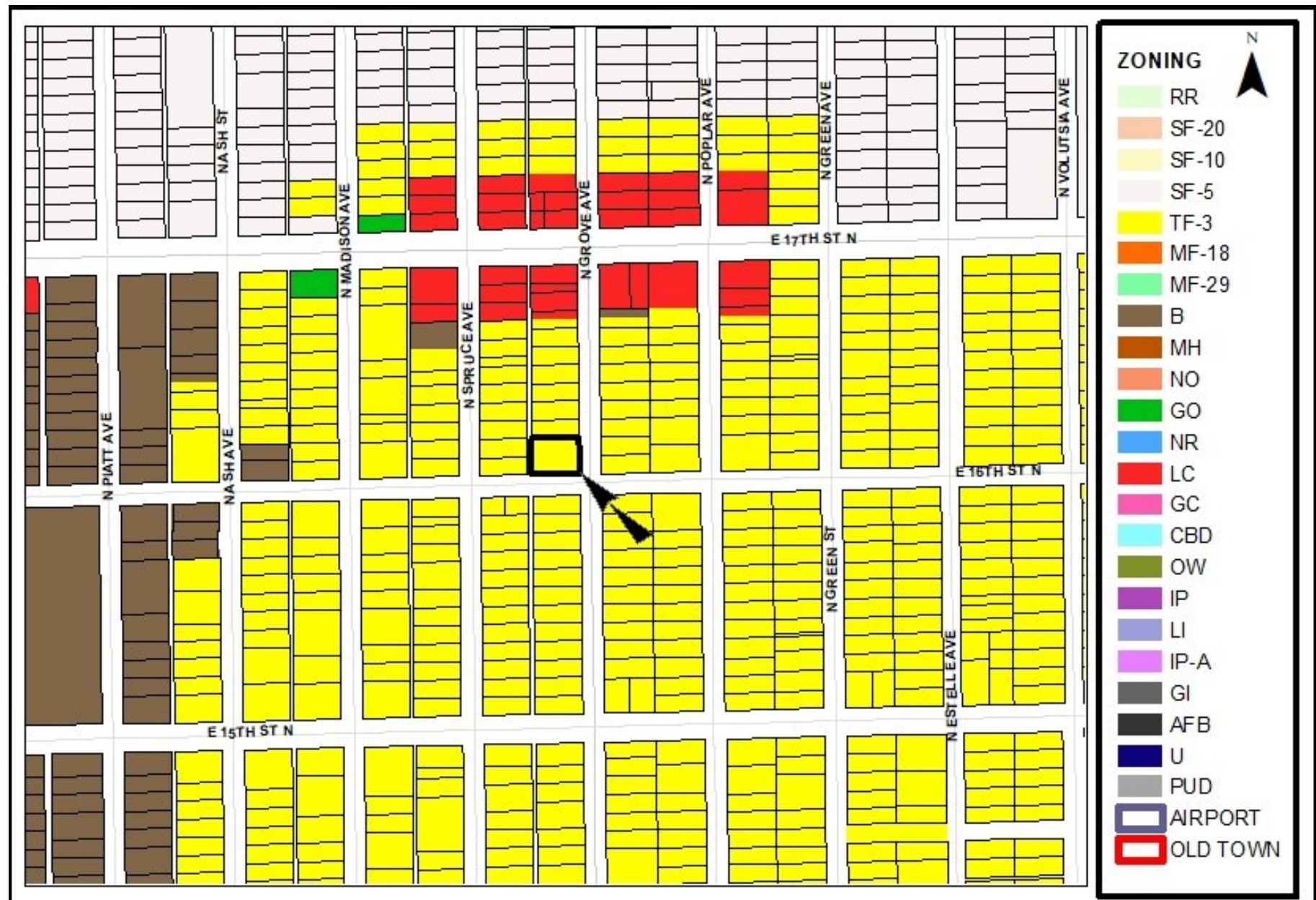
Protective Overlay #392 (Recommended by the MAPC)

1. The zoning lot shall be limited to a maximum of two (2) duplexes (4 dwelling units total).
2. Uses shall be limited to those found in the TF-3 Two Family zoning district.

Protective Overlay #392 (Recommended by DAB I)








1. The zoning lot shall be limited to a maximum of two (2) duplexes (4 dwelling units total).
2. Uses shall be limited to those found in the TF-3 Two Family zoning district.
3. Design Requirements:
 - a. **Garages.** The garage face shall occupy no more than 50 percent of the ground-level façade facing the street and may not project more than five feet in front of the main facade.
 - b. **Entrances.** Pedestrian scaled entry shall be a prominent feature of the front elevation. Front doors shall be oriented to the street in front of the units.
 - c. **Windows and Transparency.** Transparent windows and/or doors facing the street are required. To meet this requirement, at least 10 percent of the façade must be transparent. The façade is measured from the base of the house to the start of the roofline and any other vertical walls facing the street, except for gabled portions of the facade not containing livable floor area. Garages facing the street shall count as part of the façade.
 - d. **Roof Design.** Roofs shall have variation in roof planes in order to break up the large roof mass through dormers, gables, or changes in elevation. Roof forms and roof pitches of porches, dormers and garages shall be consistent and complement the building style within the neighborhood.
 - e. **Siding materials.** Siding materials shall be appropriate to the architectural style of the structure. Traditional materials consistent with the neighborhood architectural styles are encouraged such as wood, masonry and brick. Siding materials and window trim should be consistent on all sides of the structures.
 - f. **HVAC.** HVAC units shall be located away from the front of the buildings and screened from public view through landscaping and/or screen walls.
4. The parking area shall not cover more than 50% of the front yard and trash dumpsters shall not be permitted in front of the duplex building.
5. A site plan shall be approved by the Director of Planning before any building permits are issued.
6. Prior to publishing the ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.







2035 Wichita Future Growth Concept Map

Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

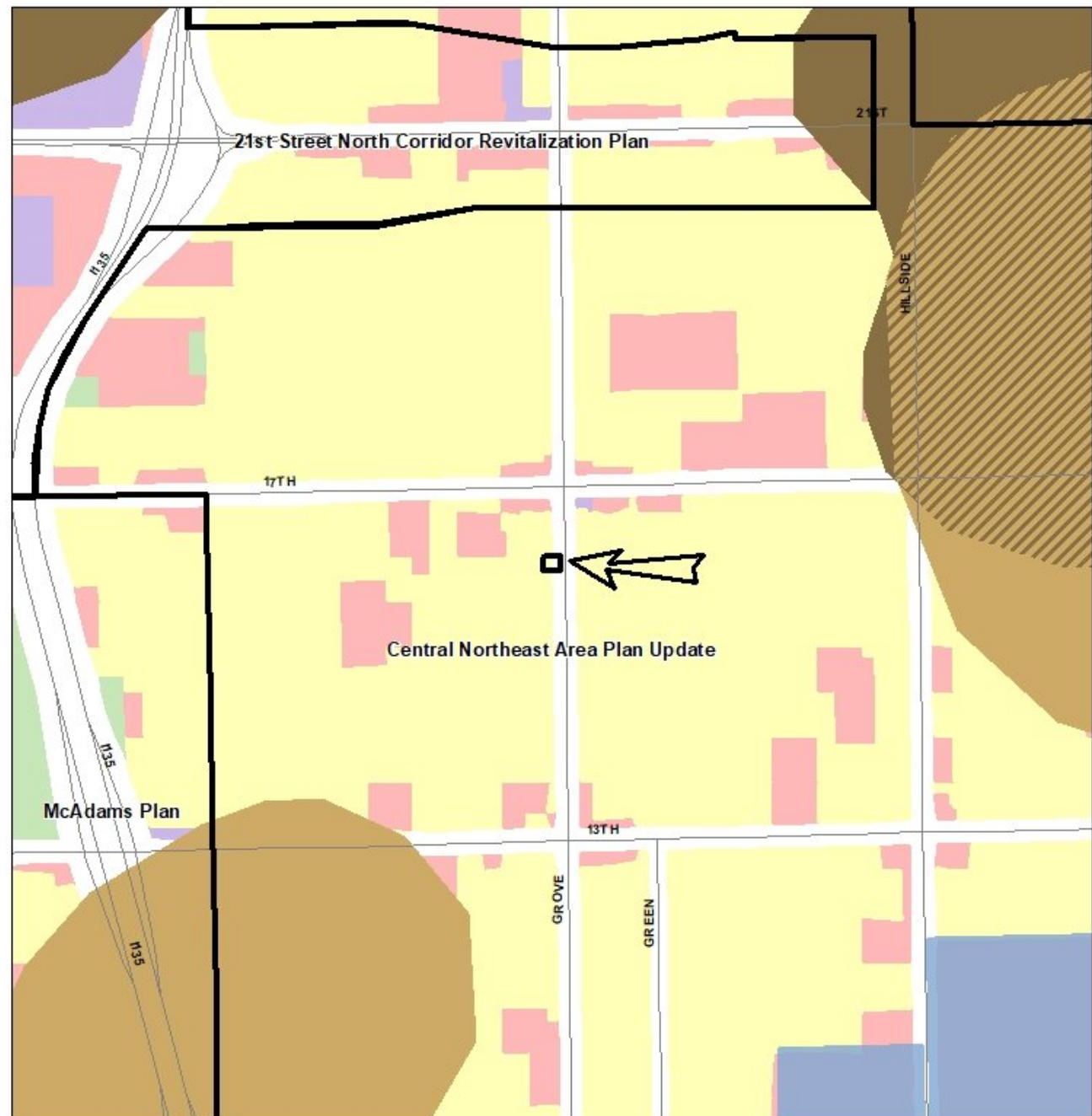
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

LAND USE

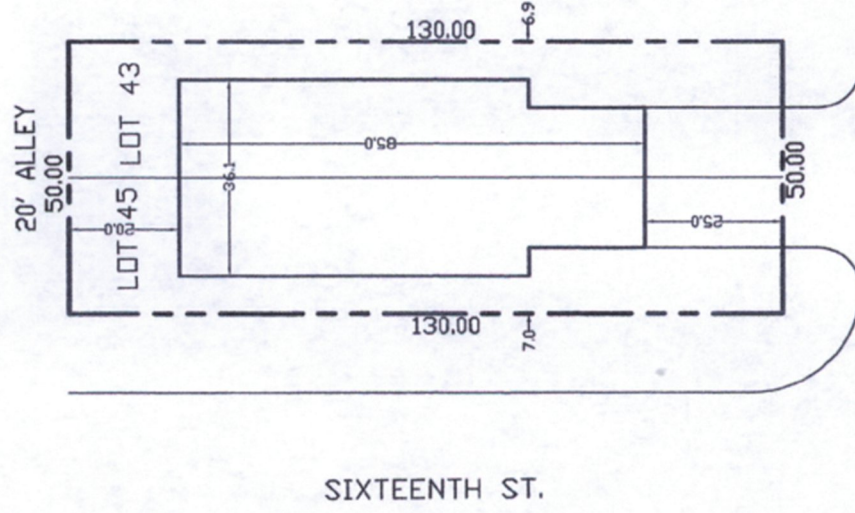
-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd_Plan_Areas



Copyright 2014 by the City of Wichita, Kansas. All rights reserved. This map is a conceptual representation of future growth and is not intended to be used for legal purposes. The City of Wichita is not responsible for any errors or omissions on this map. The City of Wichita is not responsible for any damages or losses resulting from the use of this map. The City of Wichita is not responsible for any claims, damages, or losses resulting from the use of this map. The City of Wichita is not responsible for any claims, damages, or losses resulting from the use of this map.



PLOT PLAN



SIXTEENTH ST.

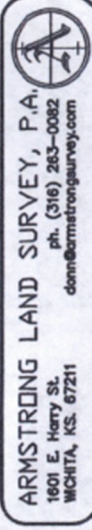
GROVE AVE.



SCALE 1"=30'

LEGAL DESC.- Lots 43 and 45, Grove Ave, Logan Addition to Wichita, KS
ADDRESS: 1701 N Grove Ave

V.D. #41424-5



Subject site facing west



Property north of the subject site



Property east of the subject site



Property south of the subject site



**EXERPT MINUTES FOR MARCH 17, 2022 WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION MEETING**

4.5 ZON2022-00011: City zone change from TF-3 Two-Family Residential to B Multi-Family Residential for construction of two duplexes on property generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove).

Lots 39, 41, 43, and 45, on Grove, formerly Tyler Ave., in Logan Addition to the City of Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests B Multi-Family Residential zoning on 0.303 platted acres generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove). The subject site is currently zoned TF-3 Two-Family Residential and is vacant.

The property is 130 feet by 100 feet, twice the size of adjacent properties. The applicant plans to build two duplexes on the property. The applicant's site plan depicts the proposed duplex that would be located on the corner of 16th Street and Grove Avenue. The duplexes will be required to meet the property development standards of the B Multi-Family Residential zoning district. These standards are shown below. The proposed duplex in the site plan meets these standards.

One reason the applicant has requested B Multi-Family zoning is due to the street side setback. In the B Multi-Family district, the street side setback is 5 feet as opposed to 15 feet in the TF-3 Two-Family zoning district. This smaller setback will allow the applicant to place two duplexes on the subject property. A comparison of the property development standards of the TF-3 district, the B district, and those shown on the applicant's site plan is shown below. The applicant meets all of the property development standards of the TF-3 district except the street side setback (height is not addressed by the applicant). Several properties along East 16th Street in the area have street side setbacks between three (3) and fifteen (15) feet. A street side setback of 7 feet fits the context of the area.

Property Development Standards

	TF-3 District	B District	Applicant's Site Plan
Minimum Lot Area (square feet) Duplex (lot area per unit)	3,000	580	6,500
Minimum Lot Width (feet)	35	-	50
Front Setback (feet)	25	20	25
Rear Setback (feet)	20	15	20
Interior Side Setback (feet)	6	5	6.9
Street Side Setback (feet)	15	5	7
Maximum Height (feet)	35	55	Not Addressed

The context of the area includes single and two-family homes with garages located in line with or behind the primary structure of the home. Staff recommends that the duplexes conform to the Wichita: Places for People design recommendations so that the duplexes fit the context of the area.

The properties north, south, east, and west of the subject property are zoned TF-3 Two-Family Residential and are developed with single-family dwellings. There are multiple properties zoned B Multi-Family in the area including on the block to the east and on the block to the west.

CASE HISTORY: On March 3, 1887, the subject property was platted as Lot 41, Block Tyler now Grove, Logan Addition.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Single family dwellings
SOUTH:	TF-3	Single family dwellings
EAST:	TF-3	Single family dwellings
WEST:	TF-3	Single family dwellings

PUBLIC SERVICES: The property has direct access to North Grove Avenue, a local paved street with a 60-foot right-of-way and sidewalks on both sides. East 16th Street North, to the south of the property, is also a local paved street with a 60-foot right-of-way. The property abuts an alley to the west. The site is served by all municipal services.

Wichita Bus Route 28 has a stop one block to the north at 17th and Grove.

CONFORMANCE TO PLANS/POLICIES: The requested zoning change is in conformance with plans and policies.

The Community Investments Plan: The requested zoning conforms to the goals of the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be primarily appropriate for Residential Uses. This category is described as follows: “Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.”

Central Northeast Area Plan: The requested zoning conforms to the priorities of the Central Northeast Area Plan. The Plan includes as a priority to “ensure that neighborhood zoning is consistent with the neighborhood vision.” The requested zoning would allow for two duplexes to be built on property that is currently zoned TF-3 Two Family.

Wichita: Places for People Plan: The requested zoning conforms to the goals of the Wichita: Places for People Plan. The Wichita: Places for People Plan provides recommendations for urban infill development in the Established Central Area (ECA). The subject site is located within the ECA. In general, the ECA is envisioned as “a place for people - a place that provides for the movement of people - on foot, on bike and through transit - in balance with automobiles.”

- **Strategies:** The Plan recommends strategies to help guide the community in their actions to create walkable places within Wichita. The requested zoning aligns with Strategy 5, “Provide a diversity of housing options to attract new residents and allow existing residents to remain in the ECA.” The two duplexes would provide housing options that otherwise might not be immediately available in the area. The requested zoning also aligns with Strategy 6, “Encourage infill and redevelopment that is contextual to the environment in which it is occurring.” The proposed rezoning would allow for the redevelopment of the property and additional Dwelling Units.
- **Current Condition:** The subject property is located within an area identified as an “area of opportunity.” The Places for People Plan defines areas of opportunity as those “areas that generally exhibit economic challenges, a disconnected development pattern and a lack of walkable places and facilities. These areas need strategic investment, both public, and private, to assist in redefining and reinvigorating the area. Areas of opportunity also require capacity-building at the neighborhood level to accommodate redevelopment that is beneficial to the neighborhood and its residents.”
- **Nodal Development Pattern:** The Places for People Plan recommends a nodal development pattern that creates a critical mass at the center of a Node and transitions in scale and intensity as uses shift from commercial to residential. The subject property falls just outside of the 17th and Hillside Neighborhood Hub.

RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends **APPROVAL** of the request, with a Protective Overlay as follows:

1. The zoning lot shall be limited to a maximum of two (2) duplexes (4 dwelling units total).
2. Uses shall be limited to those found in the TF-3 Two Family zoning district.

Staff also recommends that the duplex conform to the *Wichita: Places for People* design recommendations (not requirements) as follows:

1. **Garages.** The garage face shall occupy no more than 50 percent of the ground-level façade facing the street and may not project more than five feet in front of the main facade.
2. **Entrances.** Pedestrian scaled entry shall be a prominent feature of the front elevation. Front doors shall be oriented to the street in front of the units.
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6. **HVAC.** HVAC units shall be located away from the front of the buildings and screened from public view through landscaping and/or screen walls.

The recommendation is supported by the following findings.

1. **The zoning, uses and character of the neighborhood:** The properties north, south, east, and west of the subject property are zoned TF-3 Two-Family Residential and are developed with single-family dwellings. There are multiple properties zoned B Multi-Family in the area including on the block to the east and on the block to the west.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is currently zoned TF-3 Two Family Residential and could be developed with one duplex.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The rezoning of the parcel to B Multi-Family should not detrimentally affect nearby properties. The property is double the size of nearby properties and will be able to accommodate two duplexes.
4. **Length of time the property has been vacant as currently zoned:** The property has been vacant since at least 2011.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The requested zoning would allow the property to be in conformance with all plans and policies.

The Community Investments Plan: The requested zoning aligns with the goals of the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be primarily appropriate for Residential Uses. This category is described as follows: “Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.”

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- Strategies: The Plan recommends strategies to help guide the community in their actions to create walkable places within Wichita. The requested zoning aligns with Strategy 5, “Provide a diversity of housing options to attract new residents and allow existing residents to remain in the ECA.” The two duplexes would provide housing options that otherwise might not be immediately available in the area. The requested zoning also aligns with Strategy 6, “Encourage infill and redevelopment that is contextual to the environment in which it is occurring.” The proposed rezoning would allow for the redevelopment of the property and additional Dwelling Units.
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- Nodal Development Pattern: The Places for People Plan recommends a nodal development pattern that creates a critical mass at the center of a Node and transitions in scale and intensity as uses shift from commercial to residential. The subject property falls just outside of the 17th and Hillside Neighborhood Hub.

6. **Impact of the proposed development on community facilities:** Development of the property would make use of existing community facilities and resources, and is not expected to exceed their capacity. The site is served by all municipal services.

MATT WILLIAMS, PLANNING STAFF: Presented the staff report. He stated that the District Advisory Board (DAB) heard the meeting, and their recommendation was to require the design guidelines to be included in the Protective Overlay.

FOX: How can they be building already if this zoning isn’t approved?

WILLIAMS: The site is already zoned TF-3 so they can build the first one. They can’t add the second until the zoning case is approved, especially with that street side setback.

PHILIP RUFFO, 829 N NIMS, AGENT: The reason one is already being constructed is because it is already zoned TF-3 with no protective overlays to begin with and it fit within the parameters of your

setbacks. The only reason I needed zone B is to eliminate the side setback. I was told that protective overlays were not being required anymore. The duplex going in next to it is already what was shown on the site plan and it was already approved.

FOX: Your design plan shows the garage prominently out front.

RUFFO: Off-street parking, nice garage.

FOX: Have you seen any other houses nearby that look like this?

RUFFO: Yeah, I just built the one at 18th and Madison. There's about 500 of these scattered all over Wichita. This plan isn't anything new.

FOSTER: I'd just like to clarify, so you have no intentions of meeting the design guidelines? You plan to use the sketch plan that we received?

RUFFO: I plan to add some transparency to the front entrance with a window. There are no garages so off-street parking is crucial. To accomplish what I'm trying to accomplish, with how narrow the lots are, I have to set it up that way as it's the most feasible design and the driveways will be at least 25 feet. The actual percentage of the garage that's taking up the façade is barely 50 percent. I will meet all the other guidelines.

FOX: Did you consider having alley access and the garage in the back?

RUFFO: I have not considered that. I have seen designs like that, but I have not considered it. For the sake of uniformity, I was going to put the same thing next to each other and maybe paint it a different color. It seems like the major issue is the garage and the transparency.

FOX: One of the issues is the length of the bull nose/garage. Is there any way to build deeper on the property to reduce the projection of the garage?

RUFFO: This is about how deep you can go on the lot. I am already building one that will not have the design guidelines. I only need the B zoning to address the side setback.

FLORENCE: I see only a single driveway. How will there be access to the street?

RUFFO: The existing driveway is coming out and new access points are being built.

FOX: It may not be in the requirements, but do you plan to replace the sidewalk?

RUFFO: Yes, absolutely.

FLORENCE: How will the driveways be permitted being that close together?

RUFFO: The driveways, with side setbacks and garages, are like 14-18 feet away from each other.

WILLIAMS: If you look at the rest of the neighborhood around there, this lot is twice as large as those, and each of those are made up of two lots with two separate driveways. I don't think it should be an issue, but we can definitely look into that just to double check.

MOTION: To approve subject to staff recommendation.

DOOL moved, and **NICKS** seconded the motion, and it carried (8-2), **FOX** and **FLORENCE** opposed.



AGENDA ITEM NO. _____

STAFF REPORT

MAPC – March 17, 2022

DAB I – March 7, 2022

CASE NUMBER: ZON2022-00011 (City)

APPLICANT/AGENT: Calvin Henson, Mach Property Management LLC (Owner/Applicant);
Philip Ruffo (Agent)

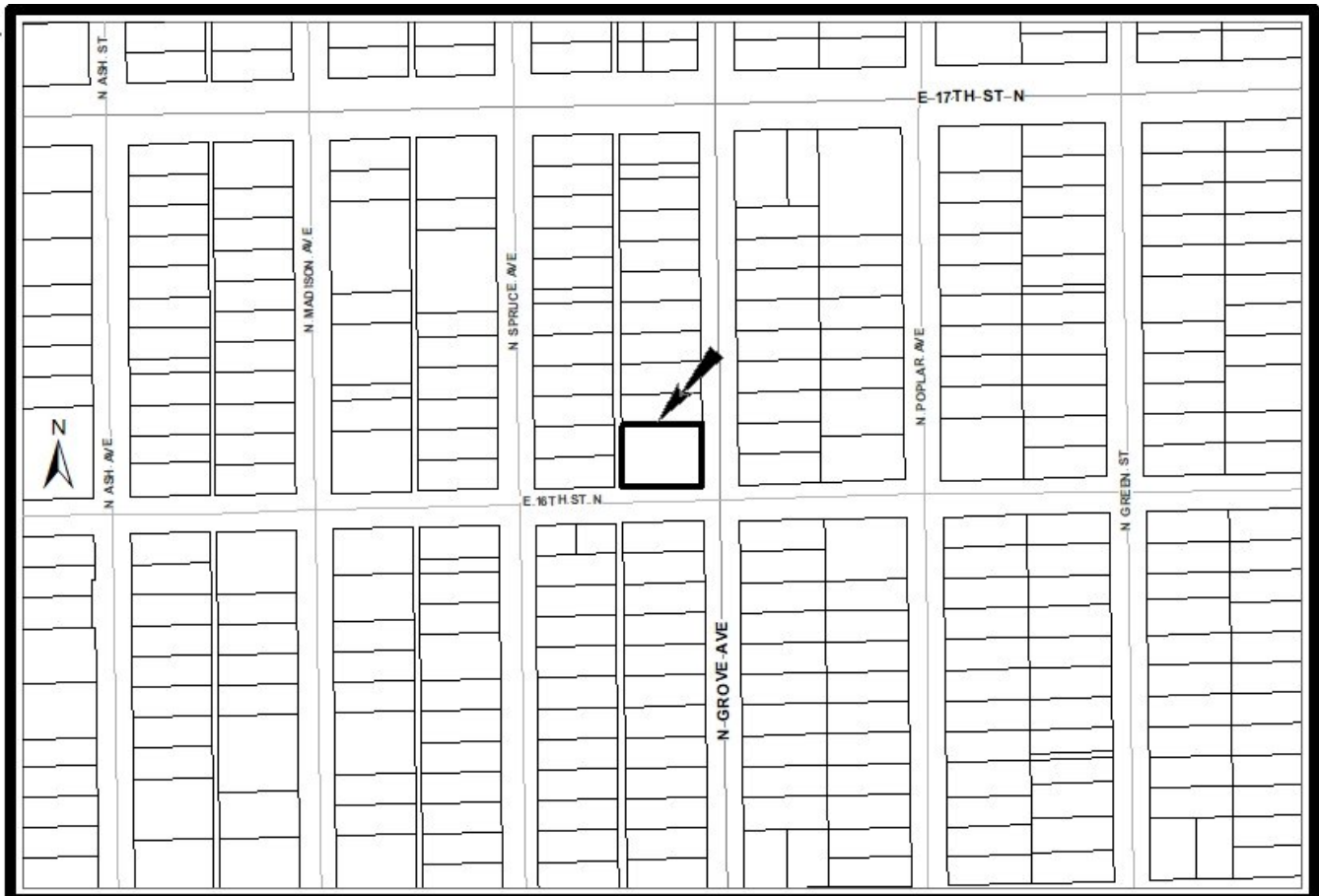
REQUEST: B Multi-Family Residential

CURRENT ZONING: TF-3 Two-Family Residential

SITE SIZE: 0.303 acre

LOCATION: Generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove).

PROPOSED USE: Two Duplexes



BACKGROUND: The applicant requests B Multi-Family Residential zoning on 0.303 platted acres generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove). The subject site is currently zoned TF-3 Two-Family Residential and is vacant.

The property is 130 feet by 100 feet, twice the size of adjacent properties. The applicant plans to build two duplexes on the property. The applicant's site plan depicts the proposed duplex that would be located on the corner of 16th Street and Grove Avenue. The duplexes will be required to meet the property development standards of the B Multi-Family Residential zoning district. These standards are shown below. The proposed duplex in the site plan meets these standards.

One reason the applicant has requested B Multi-Family zoning is due to the street side setback. In the B Multi-Family district, the street side setback is 5 feet as opposed to 15 feet in the TF-3 Two-Family zoning district. This smaller setback will allow the applicant to place two duplexes on the subject property. A comparison of the property development standards of the TF-3 district, the B district, and those shown on the applicant's site plan is shown below. The applicant meets all of the property development standards of the TF-3 district except the street side setback (height is not addressed by the applicant). Several properties along East 16th Street in the area have street side setbacks between three (3) and fifteen (15) feet. A street side setback of 7 feet fits the context of the area.

Property Development Standards

	TF-3 District	B District	Applicant's Site Plan
Minimum Lot Area (square feet) Duplex (lot area per unit)	3,000	580	6,500
Minimum Lot Width (feet)	35	-	50
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The context of the area includes single and two-family homes with garages located in line with or behind the primary structure of the home. Staff recommends that the duplexes conform to the Wichita: Places for People design recommendations so that the duplexes fit the context of the area.

The properties north, south, east, and west of the subject property are zoned TF-3 Two-Family Residential and are developed with single-family dwellings. There are multiple properties zoned B Multi-Family in the area including on the block to the east and on the block to the west.

CASE HISTORY: On March 3, 1887, the subject property was platted as Lot 41, Block Tyler now Grove, Logan Addition.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Single family dwellings
SOUTH:	TF-3	Single family dwellings
EAST:	TF-3	Single family dwellings
WEST:	TF-3	Single family dwellings

PUBLIC SERVICES: The property has direct access to North Grove Avenue, a local paved street with a 60-foot right-of-way and sidewalks on both sides. East 16th Street North, to the south of the property, is also a local paved street with a 60-foot right-of-way. The property abuts an alley to the west. The site is served by all municipal services.

Wichita Bus Route 28 has a stop one block to the north at 17th and Grove.

CONFORMANCE TO PLANS/POLICIES: The requested zoning change is in conformance with plans and policies.

The Community Investments Plan: The requested zoning conforms to the goals of the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be primarily appropriate for Residential Uses. This category is described as follows: “Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.”

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RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends **APPROVAL** of the request, with a Protective Overlay as follows:

1. The zoning lot shall be limited to a maximum of two (2) duplexes (4 dwelling units total).
2. Uses shall be limited to those found in the TF-3 Two Family zoning district.

Staff also recommends that the duplex conform to the *Wichita: Places for People* design recommendations (not requirements) as follows:

1. **Garages.** The garage face shall occupy no more than 50 percent of the ground-level façade facing the street and may not project more than five feet in front of the main facade.
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8. A site plan shall be approved by the Director of Planning before any building permits are issued.
9. Prior to publishing the ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.

The recommendation is supported by the following findings.

1. **The zoning, uses and character of the neighborhood:** The properties north, south, east, and west of the subject property are zoned TF-3 Two-Family Residential and are developed with single-family dwellings. There are multiple properties zoned B Multi-Family in the area including on the block to the east and on the block to the west.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is currently zoned TF-3 Two Family Residential and could be developed with one duplex.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The re-zoning of the parcel to B Multi-Family should not detrimentally affect nearby properties. The property is double the size of nearby properties and will be able to accommodate two duplexes.
4. **Length of time the property has been vacant as currently zoned:** The property has been vacant since at least 2011.
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The Community Investments Plan: The requested zoning aligns with the goals of the Community Investments Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be primarily appropriate for Residential Uses. This category is described as follows: “Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.”

Central Northeast Area Plan: The requested zoning aligns with the priorities of the Central Northeast Area Plan. The Plan includes as a priority to “ensure that neighborhood zoning is consistent with the neighborhood vision.” The requested zoning would allow for two duplexes to be built on property that is currently zoned TF-3 Two Family.

Wichita: Places for People Plan: The requested zoning aligns with the goals of the Wichita: Places for People Plan. The Wichita: Places for People Plan provides recommendations for urban infill development in the Established Central Area (ECA). The subject site is located within the ECA. In general, the ECA is envisioned as “a place for people - a place that provides for the movement of people - on foot, on bike and through transit - in balance with automobiles.”

- **Strategies:** The Plan recommends strategies to help guide the community in their actions to create walkable places within Wichita. The requested zoning aligns with Strategy 5, “Provide a diversity of housing options to attract new residents and allow existing residents to remain in the ECA.” The two duplexes would provide housing options that otherwise might not be immediately available in the area. The requested zoning also aligns with Strategy 6, “Encourage infill and redevelopment that is contextual to the environment in which it is occurring.” The proposed rezoning would allow for the redevelopment of the property and additional Dwelling Units.
- **Current Condition:** The subject property is located within an area identified as an “area of opportunity.” The Places for People Plan defines areas of opportunity as those “areas that generally exhibit economic challenges, a disconnected development pattern and a lack of walkable places and facilities. These areas need strategic investment, both public, and private, to assist in redefining and reinvigorating the area. Areas of opportunity also require capacity-building at the neighborhood level to accommodate redevelopment that is beneficial to the neighborhood and its residents.”
- **Nodal Development Pattern:** The Places for People Plan recommends a nodal development pattern that creates a critical mass at the center of a Node and transitions in scale and intensity as uses shift from commercial to residential. The subject property falls just outside of the 17th and Hillside Neighborhood Hub.

6. **Impact of the proposed development on community facilities:** Development of the property would make use of existing community facilities and resources, and is not expected to exceed their capacity. The site is served by all municipal services.



Interoffice Memorandum

To: MAPC/City Council
From: Tasha Hayes
Subject: ZON2022-00011
Date: March 7, 2022

On March 7, 2022 the District 1 Advisory Board considered a request on behalf of Calvin Henson, Mach Property Management LLC (Owner/Applicant); Philip Ruffo (Agent). The applicant requests B Multi-Family Residential zoning on 0.303 platted acres generally located on the west side of North Grove Avenue and one-half mile north of East 13th Street (1701 North Grove). The subject site is currently zoned TF-3 Two-Family Residential and is vacant.

There were 5 DAB members and 4 members of the public in attendance. The agent was in attendance during the DAB meeting.

DAB and members of the public asked and made the following summarized questions and comments:

Q (DAB): Will there be 8 living components?

A (MAPD): As a duplex, there will be two dwelling units per duplex. So there will be four units total on site.

C (DAB): That's a lot.

C (MAPD): One thing that we look at now is that if you look at the aerial, again, it shows the size of this property, this parcel is roughly double the size of the parcels across the street and across the alley. So in effect, it's really the size of two parcels in the property. This area, a lot of this area on the zoning map is already zoned for TF three for duplexes. So in fact, what's being proposed is largely consistent with the way that the area is zoned. But the challenge that this developer is running into, is that the way that they're trying to get the two duplexes on there, they would be too close to 16th Street, and so they're requesting the zoning to reduce that setback on that street side.

Q (DAB): What are the requirements for parking?

A (MAPD): I can look it up, it will take me a little bit of time.

Q (DAB): Can we add a recommendation for green spaces?

C (MAPD): As long as you're making a recommendation, you should be fine. But another factor is that the space on this is not, it's not very generous. That's why they're running into this situation in the first place. So if you were to require a certain amount of green space, I'd be very encouraged to be conscientious of the dimensions of the whole lot, because they don't know that they can fit a hole much more onto this property just based on what they're running into.

Q (DAB): In order to build their four units, they have to forego the setbacks and I always thought the setbacks actually allowed for the green spaces. Is that not correct?

A (MAPD): That is correct. But in this case, they're not going to they're not asking to, I guess I should emphasize, you're not asking to forego all of the green space or all of the setback area, they're saying that they can, they can provide seven feet of setback. So that's essentially where the yard would be on the side by 16th Street. But just that the way that they're laying it out, they don't have more space than that. So they can't be in compliance with the existing zoning. Because if they could, they wouldn't even be here, this case wouldn't be in front of you, because they could do it just by right.

C (DAB): I spoke with one of the owners on that actual block. From his perspective, he gets it. He thinks that, um, but then we've been hearing a lot about duplexes, and apartments coming into real tight spaces and putting in a lot of people. He's just concerned about the elements, again, that may come into the neighborhood. I know a lot of people may look down on that neighborhood, but there are homeowners there and there are people that really do care about the neighborhood. He just wanted me to express that thought they already have a lot of renters on the block on both sides, and it's becoming a problem. Cramming a lot of people into the small areas is becoming a problem.

C (MAPD): Thank you. And I acknowledge that comment.

Action Taken: Motion made by **Kaytie Brozek** and seconded by **Lawanda DeShazer** to **APPROVE** staff's recommendation with a Protective Overlay that includes the design guidelines as requirements. Motion to **APPROVE PASSED** 5-0-0.

Respectfully submitted,
Tasha Hayes, District 1 Community Services Representative

ORDINANCE NO. 51-746

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2022-00011

City zone change from TF-3 Two-Family Residential to B Multi-Family Residential zoning on property described as:

Lots 39, 41, 43, and 45, on Grove, formerly Tyler Ave., in Logan Addition to the City of Wichita, Sedgwick County, Kansas.

Subject to the following Protective Overlay #392 as follows:

1. The zoning lot shall be limited to a maximum of two (2) duplexes (4 dwelling units total).
2. Uses shall be limited to those found in the TF-3 Two Family zoning district.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ATTEST:

Brandon J. Whipple, Mayor, City of Wichita

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law

CMB'S FOR April 19, 2022

<u>Renew</u>	<u>2022</u>	<u>Consumption Off Premises</u>
Scott Riffel	Barney's Discount Drug***	3108 W. Central
Scot Weller	Auburn Hills Golf Course***	443 S. 135 th St W
Steven Blaske	Tex Consolver Golf Course***	1931 S. Tyler Rd
Gail Tsuboi	Costco Wholesale #1200***	9700 E. Kellogg

** General/Restaurant (need 50% or more gross revenue from sale of food)

*** Retailer (Grocery stores, convenience stores, etc.)

THE CITY OF WICHITA
Department of Public Works

Wichita, Kansas

**NOT TO BE ADVERTISED
PRELIMINARY ESTIMATES
FOR CITY COUNCIL APRIL 19, 2022**

PRELIMINARY ESTIMATE of the cost of improvements for Traffic Signal and Paving Improvements to 21st Street and Broadmoor, Rock Road and Rock Hill Streets. (District II) (472-2019-085591/E0020/47465520) – Total Estimated Cost \$406,560.

To the City Council
Wichita, Kansas

Date of CC 4/19/2022
(PROJ/ENG) E0020/472-2019-085591
(ORG) 47465520

THIS PROJECT IS NOT TO BE ADVERTISED FOR BIDS

PRELIMINARY ESTIMATE of the cost of improvements to serve Traffic Signal and Paving Improvements to 21st Street and Broadmoor, Rock Road and Rock Hill Streets. (District II).

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

Total Estimated Cost \$406,560

CITY OF WICHITA
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable, and just.

Gary Janzen, City Engineer

Sworn to and subscribed before me this 19th day of April 2022.

City Clerk

PRELIMINARY ESTIMATE of the cost of improvements to serve Traffic Signal and Paving Improvements to 21st Street and Broadmoor, Rock Road and Rock Hill Streets. (District II) (472-2019-085591/E0020/47465520 – Total Estimated Cost \$406,560.

Page _____ Exhibit _____

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Intergovernmental Agreement for Improvements at the Intersection of Zoo Boulevard and Hoover Road (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the agreement.

Background: On November 5, 2019, the City Council approved final design, construction funding, and right-of-way acquisition for the Hoover Road Multi-Use Path from Zoo Boulevard to 29th Street North, including signalization of the Hoover and Zoo Boulevard intersection.

Analysis: Hoover Road from just south of 21st Street North, to the intersection at Zoo Boulevard lies within the unincorporated area of Sedgwick County. Sedgwick County authorizes the City of Wichita to make the improvements and undertake the work contemplated within this agreement. The City of Wichita agrees to perpetually maintain the improvements on Hoover Road and the Zoo Boulevard intersection.

Financial Considerations: There is no current cost associated with this agreement. Future maintenance cost will be the responsibility of the City of Wichita.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachment: Agreement.

INTERGOVERNMENTAL AGREEMENT
Agreement for Traffic Signal Improvements at the Intersection
of Zoo Boulevard and Hoover Road

THIS AGREEMENT is made and entered into this ____ day of _____, 2022 by and between the City of Wichita, Kansas (“City”), and Sedgwick County, Kansas (“County”).

WHEREAS, City and County are authorized to enter into this Agreement for any governmental service, activity or undertaking pursuant to K.S.A. 12-2908 and pursuant to K.S.A. 68-572 for the reasons indicated within such statute; and

WHEREAS, this is not an interlocal agreement pursuant to K.S.A. 12-2901, *et seq.*; and

WHEREAS, City and County desire to make certain improvements to traffic signals at the intersection of Zoo Boulevard and Hoover Road and construct a new multi-use path along Hoover Road (hereinafter “Improvements”); and

WHEREAS, the intersection of Zoo Boulevard and Hoover Road is located within the unincorporated area of Sedgwick County; and

WHEREAS, County desires that City design, purchase right-of-way, and construct the Improvements.

NOW, THEREFORE, for and in consideration of the parties’ mutual promises and covenants, it is agreed as follows:

1. The purpose of this Agreement is for the City to provide for the design, utility relocation, construction, and construction engineering for the Improvements at the intersection of Zoo Boulevard and Hoover Road. Such intersection lies within the unincorporated area of Sedgwick County and County authorizes City to make the improvements and undertake the work contemplated within this Agreement.
2. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, the Improvements shall be completed and financed in the following manner:
 - a. City agrees to contract for all design, utility relocation, construction, and construction engineering required to complete the Improvements. City shall have final authority on bidding, contracting, and administration of the project regarding the Improvements.
 - b. City shall pay for all design, utility relocation, construction, and construction engineering to complete the Improvements.

3. Neither City nor County are required to pay compensation to each other within this Agreement.
4. The duration of this Agreement is until the completion of the Improvements.
5. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, City agrees to perpetually maintain the Improvements established pursuant to this Agreement. This section and City's duties described herein shall survive termination and/or conclusion of this Agreement.
6. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, City agrees to perpetually maintain the multi-use path in the unincorporated area of Sedgwick County that is located along Hoover Road between Zoo Boulevard and the limits of the City of Wichita.
7. City shall be responsible for all legal (including but not limited to eminent domain) and engineering matters concerning the Improvements and constructing such Improvements.
8. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, City does hereby release, discharge, indemnify and hold harmless County, its agents, servants and employees from any and all liability and damages of whatsoever nature and arising from whatsoever cause, relating to and arising from errors and omissions from the design of the project or from errors and omissions resulting from construction means and methods used in the construction of the project, provided, however, that the foregoing indemnity shall not apply to any liability to the extent it is (or but for the indemnity would be) subject to a limitation or statutory immunity pursuant to the Kansas Tort Claims Act. This release and indemnity shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

THE CITY OF WICHITA, KANSAS

SEDGWICK COUNTY, KANSAS

Brandon J. Whipple
Mayor

David T. Dennis
Chairman

ATTEST:

ATTEST:

Karen Sublett
City Clerk

Kelly B. Arnold
County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Jennifer Magaña
City Attorney & Director of Law

Justin M. Waggoner
Assistant County Counselor

**City of Wichita
City Council Meeting
April 19, 2022**

TO: Mayor and City Council

SUBJECT: Intergovernmental Agreement for Improvements to Pawnee Avenue from Webb Road to Greenwich Road (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the agreement.

Background: On June 1, 2021, the City Council approved construction funding for improvements to Pawnee Avenue from Webb Road to Greenwich Road.

Analysis: The east 1/2-mile of Pawnee Avenue lies within the unincorporated area of Sedgwick County. Sedgwick County authorizes the City of Wichita to make the improvements and undertake the work contemplated within this agreement. The east 1/4-mile of Pawnee Avenue is located within an improvement district in the County and annexation of the improvement district is not allowed. The City of Wichita agrees to perpetually maintain the improvements on Pawnee between Webb and Greenwich.

Financial Considerations: There is no current cost associated with this agreement. Future maintenance cost will be the responsibility of the City of Wichita.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachment: Agreement.

INTERGOVERNMENTAL AGREEMENT
Agreement for Road Improvements on Pawnee Street
Between Webb Road and Greenwich Road

THIS AGREEMENT is made and entered into this ____ day of _____, 2022 by and between the City of Wichita, Kansas (“City”), and Sedgwick County, Kansas (“County”).

WHEREAS, City and County are authorized to enter into this Agreement for any governmental service, activity or undertaking pursuant to K.S.A. 12-2908 and pursuant to K.S.A 68-572 for the reasons indicated within such statute; and

WHEREAS, this is not an interlocal agreement pursuant to K.S.A. 12-2901, *et seq.*; and

WHEREAS, City and County desire to construct and maintain road improvements on Pawnee Street between Webb Road and Greenwich Road (hereinafter “Improvements”); and

WHEREAS, the west half of the mile is located within the corporate limits of City; and

WHEREAS, the east half of the mile is located within the unincorporated area of Sedgwick County, with a portion of such half mile located within the Sunswept Highlands Improvement District; and

WHEREAS, County desires that City construct and maintain the Improvements.

NOW, THEREFORE, for and in consideration of the parties’ mutual promises and covenants, it is agreed as follows:

1. The purpose of this Agreement is for the City to provide for the construction and maintenance of Improvements along the one (1) mile of Pawnee Street between Webb Road and Greenwich Road. While half of this one (1) mile of roadway lies within the unincorporated area of Sedgwick County, County authorizes City to make the improvements and undertake the work contemplated within this Agreement.
2. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, the Improvements shall be completed and financed in the following manner:
 - a. City agrees to contract for all design, utility relocation, construction, and construction engineering required to complete the Improvements. City shall have final authority on bidding, contracting, and administration of the project regarding the Improvements.
 - b. City shall pay for all design, utility relocation, construction, and construction engineering to complete the Improvements.

3. Neither City nor County are required to pay compensation to each other within this Agreement.
4. The duration of this Agreement is until the completion of the Improvements.
5. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, City agrees to perpetually maintain the Improvements established pursuant to this Agreement. This section and City's duties described herein shall survive termination and/or conclusion of this Agreement.
6. City shall be responsible for all legal (including but not limited to eminent domain) and engineering matters concerning the Improvements and constructing such Improvements.
7. Subject to applicable limitations and restrictions of the Kansas Cash Basis Law and Kansas Budget Law, City does hereby release, discharge, indemnify and hold harmless County, its agents, servants and employees from any and all liability and damages of whatsoever nature and arising from whatsoever cause, relating to and arising from errors and omissions from the design of the project or from errors and omissions resulting from construction means and methods used in the construction of the project, provided, however, that the foregoing indemnity shall not apply to any liability to the extent it is (or but for the indemnity would be) subject to a limitation or statutory immunity pursuant to the Kansas Tort Claims Act. This release and indemnity shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

THE CITY OF WICHITA, KANSAS

SEDGWICK COUNTY, KANSAS

Brandon J. Whipple
Mayor

David T. Dennis
Chairman

ATTEST:

ATTEST:

Karen Sublett
City Clerk

Kelly B. Arnold
County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Jennifer Magaña
City Attorney & Director of Law

Justin M. Waggoner
Assistant County Counselor

Visit Wichita

Monthly Financial Report

Feb-2022

<u>Revenues</u>			
	Actuals <u>Month</u>	Actuals <u>Year to Date</u>	Annual <u>Budget</u>
<u>City Funds:</u>			
Transient Guest Tax	179,167	358,334	2,150,000
City Matching Funds	-	-	-
Contingency	1,970	6,970	130,000
TOTAL REVENUES	181,137	365,304	2,280,000
<u>Expenditures</u>			
	Actuals <u>Month</u>	Actuals <u>Year to Date</u>	Annual <u>Budget</u>
<u>Salaries and Benefits</u>	103,088	194,684	1,269,035
<u>Office Expenses</u>			
Rent	16,748	33,496	201,000
Utilities	-	-	-
Computer/Technology	5,209	7,518	65,273
Office Supplies	251	1,080	12,350
Other	498	3,269	44,074
TOTAL OFFICE EXPENSES	22,706	45,363	322,697
<u>Professional Dev, Meetings</u>	411	5,200	38,980
<u>Printing and Photocopying</u>	935	1,870	11,616
<u>Professional Fees</u>	12,256	25,227	67,660
<u>Other</u>			
Dues, Subscriptions, Tickets	352	13,660	39,149
Research	-	21,120	35,994
Retention Efforts	-	-	-
Marketing and Program Efforts	29,007	119,291	318,388
Program Support	1,970	6,970	130,000
Diversification	-	-	-
All Other Expenses	11,169	13,168	46,481
TOTAL OTHER	42,498	174,209	570,012
Total Expenditures	181,894	446,553	2,280,000
Revenues Over (Under) Expenditures	(757)	(81,249)	0

Submitted By: _____

Date: _____

Visit Wichita Marketing Monthly Financial Report

<u>Expenditures</u>			
	Actuals <u>Month</u>	Actuals <u>Year to Date</u>	Annual <u>Budget</u>
<u>Salaries and Benefits</u>	65,645	124,660	901,605
<u>Office Expenses</u>			
Rent	-	-	-
Utilities	-	-	-
Computer/Technology	498	555	24,358
Office Supplies	-	-	950
Other	824	1,706	17,604
TOTAL OFFICE EXPENSES	1,322	2,261	42,912
<u>Professional Dev, Meetings</u>	411	4,005	16,790
<u>Printing and Photocopying</u>	-	-	-
<u>Professional Fees</u>	-	-	-
<u>Other</u>			
Dues, Subscriptions, Tickets	352	4,272	16,264
Research	-	21,120	35,994
Retention Efforts	-	-	-
Marketing and Program Efforts	28,930	119,214	317,488
Program Support	1,970	6,970	130,000
Diversification	-	-	-
All Other Expenses	83	160	1,600
TOTAL OTHER	31,335	151,736	501,346
Total Expenditures	98,713	282,662	1,462,653

Visit Wichita Operations Monthly Financial Report

<u>Expenditures</u>			
	Actuals <u>Month</u>	Actuals <u>Year to Date</u>	Annual <u>Budget</u>
<u>Salaries and Benefits</u>	37,443	70,024	367,430
<u>Office Expenses</u>			
Rent	16,748	33,496	201,000
Utilities	-	-	
Computer/Technology	4,711	6,963	40,915
Office Supplies	251	1,080	11,400
Other	(326)	1,563	26,470
TOTAL OFFICE EXPENSES	21,384	43,102	279,785
<u>Professional Dev, Meetings</u>	-	1,195	22,190
<u>Printing and Photocopying</u>	935	1,870	11,616
<u>Professional Fees</u>	12,256	25,227	67,660
<u>Other</u>			
Dues, Subscriptions, Tickets	-	9,388	22,885
Research	-	-	
Retention Efforts	-	-	
Marketing and Program Efforts	77	77	900
Program Support	-	-	
Diversification	-	-	
All Other Expenses	11,086	13,008	44,881
TOTAL OTHER	11,163	22,473	68,666
Total Expenditures	83,181	163,891	817,347

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Amendment to the Real Estate Agreement for the Sale of City-owned Parcels in the 500 Block of McLean Boulevard between Vine Avenue and Fern Avenue (District VI)

INITIATED BY: Real Estate Services

AGENDA: Consent

Recommendation: Approve the amendment.

Background: On September 7, 2021, the City Council approved the sale of City-owned parcels in the 500 Block of North McLean Boulevard. The sale contract included a 240-day due diligence period to allow the developer time to rezone and replat the properties. The proposed 60-day extension will extend the due diligence period to July 5, 2022.

Analysis: The request for the extension is reasonable. The reconfiguration of the site for the proposed development is complicated. The developer has been working with its consultants, City and County staff to address all of the matters involved with the rezoning and replatting of the properties.

Financial Considerations: There is no cost associated with this action.

Legal Considerations: The Law Department has approved the amendment as to form.

Recommendation/Action: It is recommended that the City Council approve the Amendment to the Real Estate Purchase Agreement and authorize the necessary signatures.

Attachment: Amendment

SECOND AMENDMENT TO REAL ESTATE PURCHASE CONTRACT

THIS AMENDMENT made this _____ day of _____, 2022, BY AND BETWEEN

City of Wichita, Kansas, a municipal corporation
"Seller"

AND

PG Development, L.L.C., a Kansas limited liability company
"Buyer"

WITNESSETH:

Whereas, on September 7, 2021 the above parties did enter into a Real Estate Purchase Contract; and

Whereas said Contract contained a clause stating that the Developer is allowed a 240 day Inspection period to perform due diligence; and

Whereas the above parties wish to amend said Contract to extend the Inspection Period by 60 days; and

NOW THEREFORE, the parties hereto wish to amend the Real Estate Purchase Contract as follows:

Section 10. of said contract is hereby amended to read: City agrees to allow Developer reasonable access to the Property to inspect the Property. Developer will have until 5 PM CST on the 300th day after the Effective Date (the "Inspection Period") in which to inspect the Property and otherwise conduct diligence in the Developer's sole discretion to verify if Developer desires to acquire the Property. All such inspections, testing, planning applications, shall be conducted at the Developer's sole cost and expense. Developer agrees to repair any damage caused to the Property while completing said inspections. If Developer is not satisfied for any reason, Developer will have the right to terminate this Agreement by delivering to City written notice of the termination prior to the aforementioned date.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

WITNESS OUR HANDS AND SEALS the day and year first above written.

BUYER:

PG Development, L.L.C.



Jeff Englert, Member

SELLER:

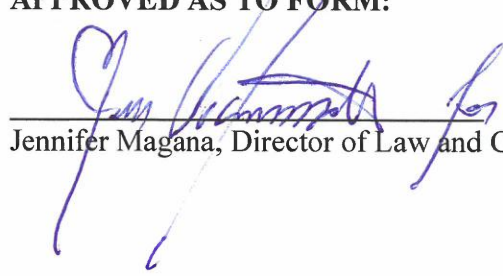
City of Wichita, Kansas

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:



Jennifer Magana, Director of Law and City Attorney

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Amendment to Housing Development Loan Program Funding Agreement with Hope Enterprise, Inc. (District I)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the contract amendment providing for additional HOME Investment Partnerships Program funding for the project and extension of the date for completion and authorize the necessary signatures.

Background: On November 2, 2021, the City Council approved a HOME Investment Partnerships Program (HOME) Housing Development Loan Program funding agreement with Hope Enterprise, Inc. (Hope Enterprise) in the amount of \$76,600 to support development of a single-family home to be located at 1456 N. Ash. Hope Enterprise has acquired the site.

Analysis: Hope Enterprise has requested additional funding in the amount of \$28,305 for the project. The original funding agreement was based on Hope Enterprise's plan for Paul Gray Homes, LLC (Paul Gray Homes) to construct the home, with a construction budget of \$155,500. Hope Enterprise advises that due to increased demand for home construction and current contractual obligations, Paul Gray Homes will not be able to complete the project in the near future. Therefore, Hope Enterprise has engaged Zimbelman Construction, LLC (Zimbelman Construction) to build the 978 square-foot home. Due to current volatility and uncertainty with respect to materials prices, Zimbelman Construction has provided an estimated construction budget of \$181,255. Given the increased construction budget, the construction lender, Fidelity Bank, has expressed concern that sufficient HOME funding will be available to complete construction of the home prior to completion of the sale to the end buyer. Therefore, staff recommends approval of the additional funding. The amendment to the funding agreement will also include a provision for additional time to complete the project, through March 31, 2023, in order to allow for potential delays in the delivery of materials.

The project is consistent with the City's Comprehensive Housing Policy, specifically, the components related to affordability, availability, and neighborhood stability. The project is also in accordance with the departmental goal to increase the supply of housing in order to maintain affordability for residents earning 80 percent or less of the area median income. The area median income is currently \$75,812 for a family of four.

Financial Considerations: There is no impact to the General Fund. The revised total project cost is expected to be \$208,905. Hope Enterprise is contributing \$7,500 to the project. HOME funding is provided in the form of zero-interest, forgivable development subsidy loan. Any HOME funding not utilized to cover project costs will be repaid to the city.

Legal Considerations: The Law Department has reviewed and approved the amendment to the funding agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract amendment providing for additional HOME Investment Partnerships Program funding for the project and extension of the date for completion and authorize the necessary signatures.

Attachments: First Amendment to Funding Agreement.

FIRST AMENDMENT TO FUNDING AGREEMENT
Between
THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And
Hope Enterprise, Inc.
HOME Investment Partnerships Program
2020 Housing Development Loan Program Funding
1456 N. Ash

City of Wichita
Housing and Community Services Department
455 N. Main, 10th Floor
Wichita, KS 67203
Phone (316) 462-3700
Fax (316) 462-3719

This contract amendment is entered into and dated to be effective April 19, 2022 between the City of Wichita (hereinafter referred to as “the City”) and Hope Enterprise, Inc. (hereinafter referred to individually as the “Developer”).

WITNESSETH THAT:

WHEREAS, the above named entities were parties to a Grant Agreement dated November 2, 2021, and dated to be effective November 2, 2021, in the amount of \$76,600, in which the Developer agreed to undertake an affordable housing program involving the acquisition of property and construction of a single-family home.

NOW, THEREFORE, the above named parties, in order to fulfill the original intent of the grant agreement dated to be effective November 2, 2021, now modified by this first amendment, entered into April 19, 2022, hereby agree, covenant, and contract with each other that, effective April 19, 2022, the terms of the agreement are hereby reaffirmed and re-executed for and on behalf of these parties except for the following amendments, modifications, and changes indicated below and changes to the original Exhibit B, Exhibit C, and Exhibit D, which are indicated in the said exhibits hereto.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by March 31, 2023, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of each unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Should it be necessary to convert a housing unit developed under this agreement to a rental unit as described in section IV of Exhibit B of this agreement, the contract will otherwise remain in force through the period of affordability which will end on a date 20 years following the date of completion of the unit, as defined in 24 CFR 92.2. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Developer, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Developer will not exceed \$104,905 as referenced in Exhibit B. Contract payments above \$104,905 are contingent upon the sale of

completed projects and extended grant authority as a result of program income generated by the project.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Developer or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

Hope Enterprise, Inc.

Signature

Title of Hope Enterprise, Inc. Officer

Date

CITY OF WICHITA

By _____
Brandon J. Whipple, Mayor Date

ATTEST:

Karen Sublett, City Clerk

Date

Approved as to Form:

Jennifer Magana,
City Attorney and Director of Law

Date

**PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES**

It is mutually agreed and understood by the City of Wichita and Hope Enterprise, Inc., hereinafter referred to as the "City" and "Developer", that execution of this contract obligates the Developer to the following performance requirements.

In return for the \$104,905 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition and redevelopment of sites as follows:

Approximately 1456 N. Ash (Lots 142-144-146 Strong Now Ash St., Logan Addition to Wichita, Sedgwick County, Kansas. – Exact street address to be assigned by MABCD when building permit issued.)

A single-family home is to be constructed on each site described. The single-family home(s) must be sold to (an) income-eligible owner-occupant buyer(s). If any of the single-family homes are not sold as described, within a period of nine (9) months following issuance of a Certificate of Occupancy by the City of Wichita, the unsold home(s) must be converted to a single unit HOME-assisted rental project as described in Section IV of this Exhibit “B”.

Homebuyer Assistance Funding Commitment: Housing constructed/developed under this agreement must be sold to a HOME-compliant owner-occupant buyer, with down payment and closing costs assistance provided through the City's HOMEownership 80 program. The City will hold the deed restrictions for this HOME assistance. (24 CFR 92.254, Qualification as Affordable Housing, Homeownership.) The City hereby commits funding for said down payment and closing costs assistance loans for buyers of the homes to be constructed under this agreement, in the maximum amount of **\$24,000** per housing unit, or a total of **\$24,000**, in addition to applicable and eligible homebuyer training costs and in addition to the development subsidy funding provided under this agreement.

The Developer represents and agrees that its purchase of property and its other undertakings pursuant to this Agreement are, and will be, for the purpose of redevelopment of such property and not for speculation.

Maximum sales prices of homes to be constructed/developed under this agreement shall be as follows:

Single-Story or Two-Story, Two Bedroom, One Bath, Two-Car Garage, Full Basement with one bedroom finished.

(Prices may be increased, subject to approval by the City of Wichita's Housing and Community Services Department, for certain modifications or additional bedroom or bathroom finish requested by buyer.)

The Developer represents and agrees that it will remain the owner of the property until it reaches agreement with a prospective buyer(s) of the property and, by mutual agreement, the Developer will transfer title to the prospective buyer. All HOME assistance will be repaid to the City; except in cases where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of assistance. Net proceeds will be considered funds available following adjustment for approved additional costs incurred by the Developer to prepare the property for ownership that were not collectable through sale of property. Funds that are not recoverable will be considered a development grant subsidy to the Developer.

I. Project Requirements

- A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of Energy Star. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

- B. Prior to executing any contracts for sale of assisted properties, the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

- A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes,

purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of a 0% interest development subsidy loan to complete the project as approved by the Department of Housing and Community Services.

- B. Upon execution of this contract, the Developer shall proceed to complete acquisition of the individual project sites as described herein, upon completion of environmental reviews or within 60 days of execution of this agreement, whichever date comes later. An extension of time for site acquisition may be approved by the City of Wichita Housing and Community Services Department on a case-by-case basis.
- C. Developer will identify potential owner-occupant buyers for the homes to be constructed, will assist them in applying for and securing first mortgage financing, will assist them in applying for down payment assistance loans to be provided by the City, and will coordinate final closings. The Developer is prohibited from charging servicing, loan origination, processing, inspection, or other fees that represent the cost of providing HOME assistance.
- D. Developer shall complete closing of construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 70% or more of the appraised value of the home to be constructed, as approved by the City, within 60 days of the acquisition of the project sites, or within 60 days of signing a purchase agreement with an owner-occupant buyer who has obtained a written commitment for long-term mortgage financing, whichever date comes later.
- E. The Developer shall commence construction activities at each individual project site within 45 days of construction loan closing, but no later than 360 days from the date of execution of this funding agreement. Each single family home is to be completed within a period of six months. Final site improvements are to be completed as seasonally appropriate.

III. Administration

The Developer's Chief Executive Officer will supervise operations and administration on a day-to-day basis.

- A. Funding: It is mutually agreed by and between the City and the Developer that the total HOME funds available for this project will be \$104,905 in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

- B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of **\$104,905** for the program described in this contract. A developer fee in the amount of 10% of the total development cost will be paid to the Developer in connection with a completed project. The developer fee will be pre-determined at the onset of the construction of the home, and will be paid upon the closing of the sale of the individual home. Proceeds from the sale of the home, less the aforementioned developer fee, and applicable costs will be returned to the City, in the form of a payoff of the development subsidy loan provided under this agreement. Contract payments over and above the original budgeted amount are contingent upon the sale of completed homes/projects, and extended grant authority as a result of repayments generated by the sale of the completed home. Extended grant authority may be utilized to develop additional housing units under the terms of this agreement. Funding under this agreement shall be originally budgeted as follows:

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee, Construction Loan Refinance/Principal Reduction, Operating Reserves.)

\$ 104,905

TOTAL

\$ 104,905

- C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.
1. The City and the Developer also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than \$10,000, other than those within the scope of this agreement must be approved by the City Council.
 2. The Developer will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.
 3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

IV. Conversion of Homeownership Activities (Sites) to Rental Projects

In the event that a single-family home and real estate developed under this agreement has not been sold to an eligible homebuyer, as evidenced by a ratified sales contract, within nine months of completion, the unit must be converted to a HOME rental unit that complies with all HOME requirements for the period of affordability applicable to such unit (20 years), as described in this Section IV. For purposes of this Section IV, the “Developer” shall become the “Owner”, and the following additional requirements of this Section IV shall apply:

A. Project Requirements

1. Project must conform to regulations under 24 CFR Part 92, commonly known as the HOME Regulations.
2. 24 CFR Part 92, Subpart F specifically describes maximum HOME contribution per unit, Property Standards, Tenant and participation rents and protections, and period of affordability based on the level of HOME fund contributions.

Specific references to HOME Project Requirements can be found as follows:

24 CFR 92.252, Qualification as affordable housing: Rental Housing. The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the requirements of this part, in order to qualify as affordable housing.

24 CFR 92.253, Tenant and participant protections apply, and are related to lease terms, termination of tenancy, and tenant selection.

24 CFR 92.504, Required Annual On-Site Inspections of HOME-assisted Rental Housing.

B. Initial rents for HOME-assisted units are as follows, per current HUD guidelines:

2 Bedroom: \$854 - \$194 (Utility Allowance) = \$660

3 Bedroom: \$1153 - \$234 (Utility Allowance) = \$919

4 Bedroom: \$1371 - \$274 (Utility Allowance) = \$1097

These rents assume that homes constructed under this program will feature gas heat and gas water heating, an electric range, electric air conditioning, with other electric appliances and electric lighting. **Electric ranges are to be provided. The**

tenant will pay for all utilities, including water service, sewer service, and trash service. If utilities are to be provided in an alternative manner, the Owner will notify the City so that HOME rents can be re-calculated. HOME rents are subject to revision by HUD on an annual basis. HOME assisted units will be subject to rent limitations and other requirements specified in Section 92.252, during the period of affordability.

Should any of the units developed under this agreement be converted to rental housing, the Rent and Utility Allowance schedule shall be approved and issued for use by the Developer, by the City of Wichita's Housing and Community Services Staff, at the time of conversion.

The Owner is also required to lease the HOME-assisted unit to households earning 60% or less of median annual income for the area, as determined by HUD. This requirement, in addition to the other requirements in Section 92.252, will be in effect during the period of affordability.

Units with four bedrooms may be allowed on a case-by-case basis, subject to City approval. The City will provide HOME rent amounts and utility allowances as required.

- C. Procedures for Rent Increases: The Owner will submit requests for rental increases 60 days prior to the effective date of the proposed rent increase for approval by the City of Wichita's Housing and Community Services Department staff.
- D. Leases, Tenant Selection Policies, and standards for its waiting lists will comply with 24 CFR Part 92.253, and the Owner will submit these documents to City staff for review and approval, prior to lease-up.
- E. The Owner shall maintain project/tenant records for a period of no less than five years.
- F. Owner agrees to inspection of all HOME-assisted units following completion to ensure compliance with the requirements of 24 CFR Part 92.251 (a) (1) and (3). The Owner must maintain the housing in compliance with 24 CFR Part 92.251 for the duration of the affordability period, and agrees to inspection of the HOME-assisted units on an annual basis, in order to verify continued compliance with 24 CFR Part 92.251 and 24 CFR Part 92.252.
- G. Owner agrees to execute a document placing deed restrictions and covenants against the property in order to comply with 24 CFR Part 92.252. Said restrictions and covenants will be in force for the period of affordability, which is 20 years, beginning the date of project completion. Definition of project completion is

specified in 24 CFR, Part 92.2. Said document will be filed of record by the City.

- H. Owner agrees to comply with the Fair Housing and Equal Opportunity Act. (92.202 and 92.250), Title VI of Civil Rights Act of 1964, (42 USC 2000d et.seq.), Fair Housing Act (42 USC3601-3620) Executive Order 11063 (amended by Executive order 12259), Age Discrimination Act of 1975, as amended (42 USC 6101), 24 CFR 5.105 (a).

Owner must comply with federal requirements set forth in 24 CFR part 5, subpart A. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace. Nondiscrimination requirements at section 282 of the Act are applicable.

- J. Owner must comply with the affordability requirements in 24 CFR Part 92.252 as applicable. If Owner fails to comply with the affordability requirements in 24 CFR Part 92.252 repayment of HOME funds is required.
- K. The Owner/Project Management must verify the income of tenants of HOME-assisted units prior to occupancy, per the requirements of 24 CFR Part 92.203 (a) (1) (I). Copies of source documentation are required to be maintained in tenant files. Project Management must re-examine the income of tenants of HOME-assisted units on an annual basis. Project Management will utilize the definition of annual income described in 24 CFR Part 92.203 (b) (1), also known as the Section 8 Method.
- L. The Owner/Project Management agree to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for projects containing five or more HOME-assisted units. The Affirmative Marketing Plan must be available for public inspection in the leasing office. The plan must contain specific steps and actions that the developer will take to provide information and otherwise attract eligible persons of all racial, ethnic, and gender groups in the housing market area of the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:
 - 1. Display the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.
 - 2. Display the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period
 - 3. Send notices of housing availability (using form approved by the City) to agencies from a list provided by the City.

4. Provide copies of all materials sent to community contacts announcing the housing availability to the City of Wichita Housing Services Department.
5. No later than 90 days prior to engaging in marketing activities, the Agency should notify the City of Wichita Housing Services Department, either in writing or by telephone of the earlier of the dates on which: (1) the Agency plans to begin initial marketing activities; (2) accepts leasing applications; and (3) begins leasing units.
6. The Owner must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.
7. The Owner will retain copies of all documentation related to marketing efforts, and make available for City inspection.
8. The Owner will provide, for the year ending June 30 of each year, beginning **July 31, 2022**, an annual report, in a format to be provided by the City. Said report shall be due to the City of Wichita July 10 of each applicable year.

V. Records and Reports

- A. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.
- B. **The Developer will provide, for the year ending July 31 of each year, beginning July 31, 2022, an annual report of the HOME funded portion of the program.** It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developer's fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 31** of each applicable year.

- C. Additionally, a narrative or other description of progress may be provided.
- D. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

VI. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

- A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home is re-sold, as specified in this agreement.
- B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.
- C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.
- D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.
- E. Provide evidence that ownership interest in the property vests in Jakub's Ladder (Copy of Deed, and/or Title Insurance Binder/Policy)
- F. The Developer will obtain any and all permits required by the City prior to undertaking construction.
- G. The Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 70% of the appraised value of the home to be developed/constructed on each project site. Developer to provide a construction loan appraisal for each individual home to be constructed under this agreement, which is to be reviewed and approved by the City, prior to construction.
- H. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted

project plan. This includes changes in costs, as well as changes in the project scope or plans.

- I. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.
- J. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with the City of Wichita Office of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the City of Wichita Office of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.
- K. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.
- L. In addition to the above, the Developer agrees to provide any additional documentation deemed necessary by the City to comply with program regulations, including, but not limited to, real estate contracts and mortgage loan commitment documentation.

VII. Other Program Requirements

- A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for projects containing five or more HOME-assisted units. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and

otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.
 2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.
 3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.
 4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.
 5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.
- B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.
- The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.
- C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.
- D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

- E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.
- F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.
- G. Developer shall apply for City incentives for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VIII. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

IX. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, Developer Fee, Construction Loan Refinance/Principal Reduction, Operating Reserves.)

\$ 104,905

TOTAL

\$ 104,905

Exhibit D**DEVELOPMENT BUDGET****Per Unit Cost (Prepare for One Unit)**

(A) Site Acquisition Cost	5,150.00
(B) Plus: Construction (Hard) Costs Including Demolition	181,255.00
(C) Plus: Project Soft Costs (Loan Fees, Interest, Appraisals, Property Taxes, Surveys, Utilities, Advertising/Affirmative Marketing Expense, etc.)	7,000.00
(D) Plus: Estimated Permit Fees (Include Water/Sewer Tap Fees if Applicable – Enter “0.00” if project is to be undertaken in the City NRA)	0.00
(E) Plus: Required Site Improvements (Fencing; Lawn Seeding)	3,500.00
(F) Subtotal (A+B+C+D+E); Preliminary Per-Unit Development Cost	196,905.00
(G) Plus: Developer Fee	12,000.00
(H) Total Per-Unit Cost (F + G)	208,905.00
(I) Less: Anticipated Net Sale Proceeds, after expenses and real estate commission	104,000.00
(J) Less: Cash Match Contribution from Developer	7,500.00
Project Subsidy Required, per unit (H – I – J)	104,905.00

Number of Units to be Developed 1

Total Amount of Funding Requested (Number of Units to be Developed X Project Subsidy Required Per Unit) \$104,905

Sources and Uses of Funds Statement (For Entire Project; Figures to Include All Units)

Sources	Amount	Uses	Amount
Construction Financing	84,000.00	Acquisition Costs	5,150.00

		Project “Soft” Costs	7,000.00
HOME (Gap) Financing	104,905.00	Construction Costs	181,255.00
Repayment of Subsidy Loans	12,500.00	Site Improvements	3,500.00
		Developer Fee	12,000.00
<u>TOTAL</u>	208,905.00	<u>TOTAL</u>	208,905.00

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: 2022 Traffic Signalization (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the project and construction locations, adopt the resolution, and approve the budget.

Background: The Adopted 2022 -2031 Capital Improvement Program (CIP) includes an ongoing project to signalize major intersections and improve the traffic signals at existing signalized intersections.

Analysis: The 2022 Traffic Signalization Program will be used for design and construction of traffic signals at the following locations:

- Ridge and Village Circle
- 29th Street North and Greenwich Road
- MacArthur Road and Hoover Road

The Ridge and Village Circle signal is expected to be constructed in 2022. The other two signals are expected to be constructed in 2023. Remaining funds will be used for additional sites as requested by the public or identified by staff when warrants are met.

Financial Considerations: The Adopted 2022-2031 CIP includes \$750,000 in 2022 for Traffic Signalization. The funding source is General Obligation bonds. Staff is requesting that the budget be initiated at this time.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the budget, adopt the resolution and authorize the necessary signatures.

Attachment: Resolution.

Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-0404-05 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides
WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

12025 W. Kellogg, P#20551

**Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign
on the LESSOR's property)**

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Seven Hundred Thirty-Five (\$735.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Should **LESSEE's** installation of the sign result in a taxable event, as decided by Sedgwick County, involving personal property, real property or usage taxes, **LESSEE** agrees to pay any portion of the real or personal property taxes which may be assessed upon the leased premises, or upon the Sign, however, that **LESSOR** agrees to, within ten (10) business day of receipt of a tax bill for such taxes, forward the same to **LESSEE**. If **LESSEE** receives a notice for real or personal property taxes directly attributable to the installation of the Sign; **LESSEE** shall pay these taxes before the due date. **LESSEE** shall have the right to protest the amount of any such assessment and **LESSOR** agrees to execute any and all documentation required by the assessor to permit **LESSEE** to submit and execute such protest.
12. **LESSOR** may terminate this Lease upon two hundred seventy (270) days' written notice to **LESSEE** that the City Council of the City of Wichita has taken action requiring the property for a specific public purpose. **LESSOR** to give proper notice to **LESSEE** so as to allow **LESSEE** to attend and speak at such meeting(s).
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desirable to correct, amend, or supplement any matter set forth in such memorandum. LESSOR further authorizes LESSEE to perform all acts that are incidental to or necessary for the execution and recordation of such memorandum or memoranda.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04/01/2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:

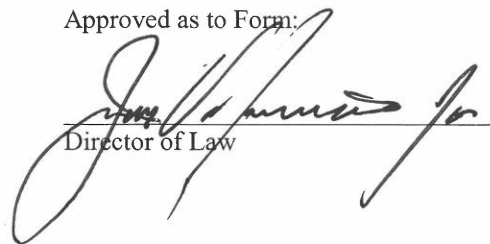
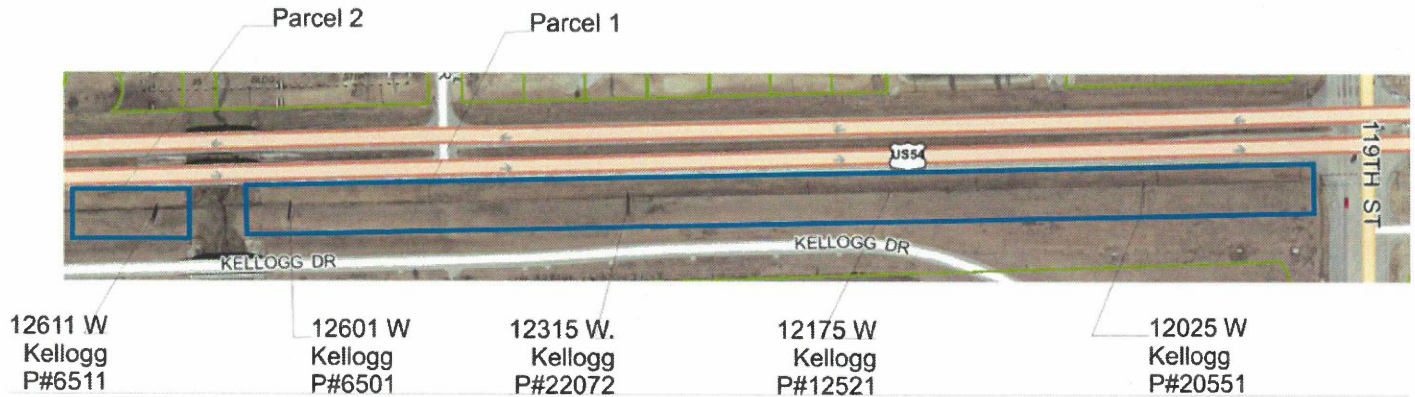

Director of Law

EXHIBIT A

Lease #432-0404-05

12025 W. Kellogg, P#20551

Parcel 1





COMPANIES

Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

X Renewal
432-0404-04 Lease #

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

12175 W. Kellogg, P#12521

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of One Hundred Seventy (\$170.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
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8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
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LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04/01/2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:

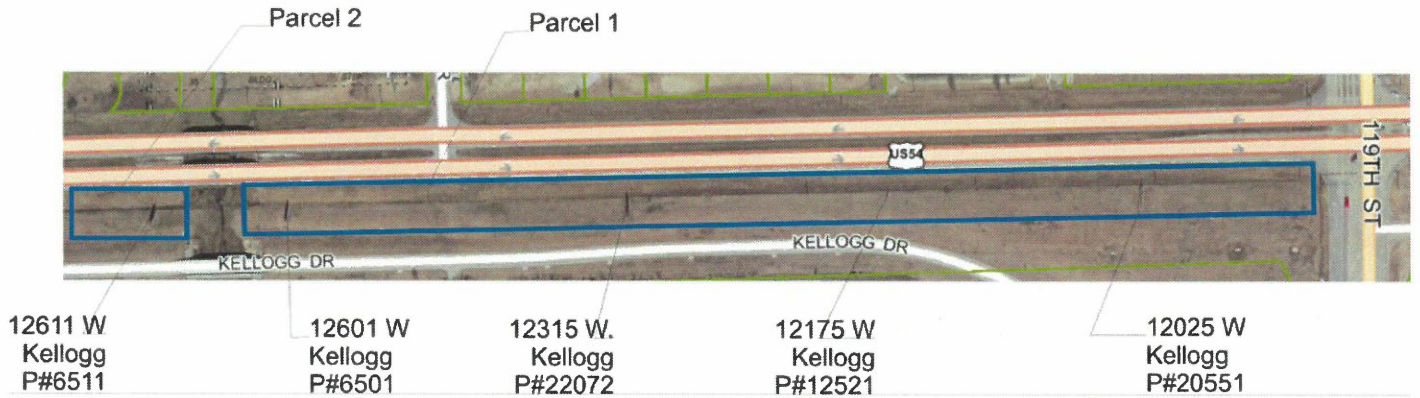

Director of Law

EXHIBIT A

Lease #432-0404-04

12175 W. Kellogg, P#12521

Parcel 1



Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

X New
Renewal
432-0404-03 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides
WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

12315 W. Kellogg, P#22072

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

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LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04/01/2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:

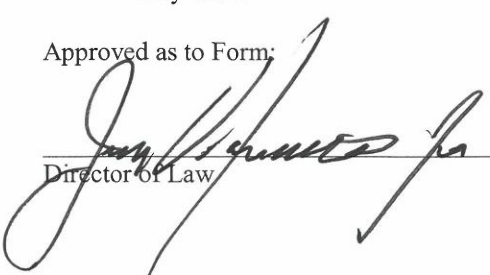
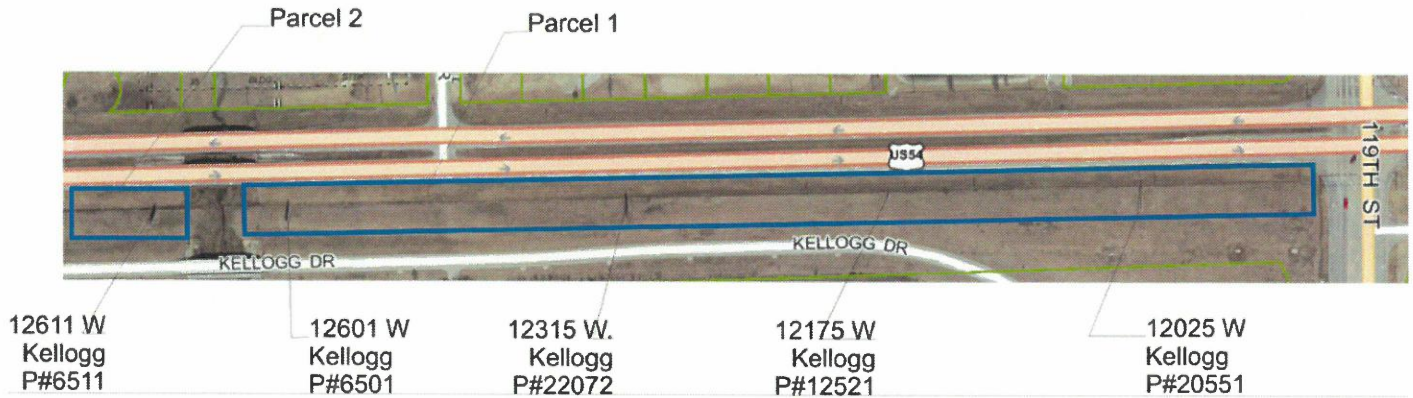

Director of Law

EXHIBIT A

Lease #432-0404-03

12315 W. Kellogg, P#22072

Parcel 1



Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-0404-02 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

12601 W. Kellogg, P#6501

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Three Hundred Sixty-Nine (\$369.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Should **LESSEE's** installation of the sign result in a taxable event, as decided by Sedgwick County, involving personal property, real property or usage taxes, **LESSEE** agrees to pay any portion of the real or personal property taxes which may be assessed upon the leased premises, or upon the Sign, however, that **LESSOR** agrees to, within ten (10) business day of receipt of a tax bill for such taxes, forward the same to **LESSEE**. If **LESSEE** receives a notice for real or personal property taxes directly attributable to the installation of the Sign; **LESSEE** shall pay these taxes before the due date. **LESSEE** shall have the right to protest the amount of any such assessment and **LESSOR** agrees to execute any and all documentation required by the assessor to permit **LESSEE** to submit and execute such protest.
12. **LESSOR** may terminate this Lease upon two hundred seventy (270) days' written notice to **LESSEE** that the City Council of the City of Wichita has taken action requiring the property for a specific public purpose. **LESSOR** to give proper notice to **LESSEE** so as to allow **LESSEE** to attend and speak at such meeting(s).
13. If required by **LESSEE**, **LESSOR** will execute and acknowledge a memorandum of lease suitable for recordation. In addition to the foregoing, **LESSOR** authorizes and appoints **LESSEE** as **LESSOR's** agent, representative, and attorney in fact for the limited purpose of executing on behalf of **LESSOR** such memorandum of lease and any amended memoranda of lease that are

necessary or desirable to correct, amend, or supplement any matter set forth in such memorandum. LESSOR further authorizes LESSEE to perform all acts that are incidental to or necessary for the execution and recordation of such memorandum or memoranda.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04 / 01 / 2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address
48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:
2901 S. Kansas Ave
Wichita, KS

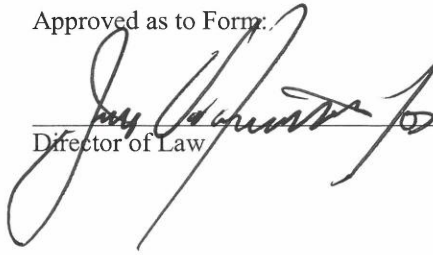
Address of LESSOR:
455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:



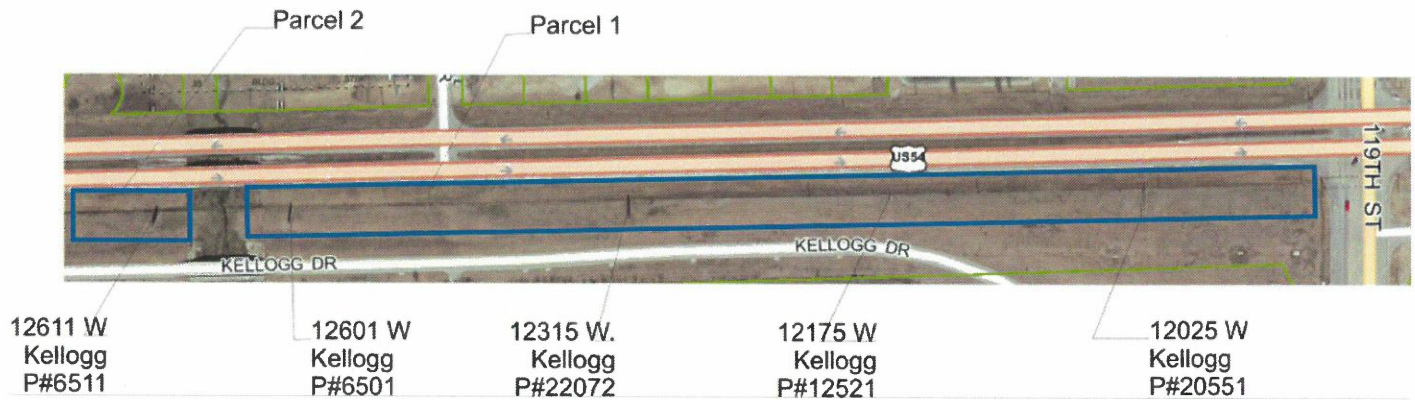
Director of Law

EXHIBIT A

Lease #432-0404-02

12601 W. Kellogg, P#6501

Parcel 1



Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-0404-01 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

12611 W. Kellogg, P#6511

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Three Hundred Sixty-Nine (\$369.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
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6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
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LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04/01/2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:



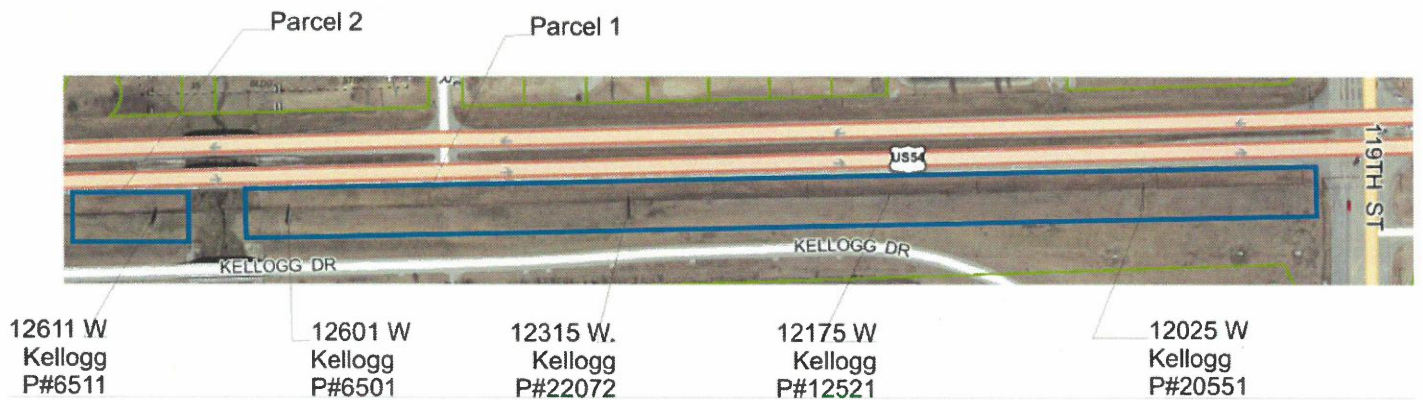
Director of Law

EXHIBIT A

Lease #432-0404-01

12611 W. Kellogg, P#6511

Parcel 2



Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-1052-01 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides
WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

13900 W. Kellogg, aka MM 206.523 US-54, P#20302

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign
on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

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6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.

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LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04 / 01 / 2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address
48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:
2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:
455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:

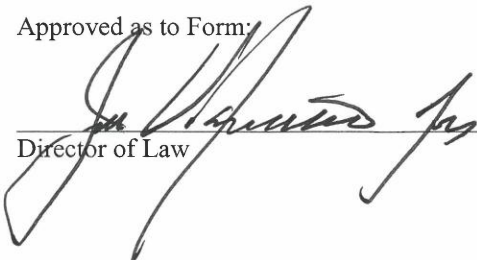

Director of Law

EXHIBIT A

Lease #432-1052-01

13900 W. Kellogg, aka MM 206.523 US-54
P#20302



13900 W. Kellogg
P#20302

13650 W. Kellogg
P#20522

13750 W. Kellogg
P#23912

Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-1052-02 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

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City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides
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The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

13750 W. Kellogg, aka MM 206.570 US-54, P#23912

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Six hundred (\$600.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Should **LESSEE's** installation of the sign result in a taxable event, as decided by Sedgwick County, involving personal property, real property or usage taxes, **LESSEE** agrees to pay any portion of the real or personal property taxes which may be assessed upon the leased premises, or upon the Sign, however, that **LESSOR** agrees to, within ten (10) business day of receipt of a tax bill for such taxes, forward the same to **LESSEE**. If **LESSEE** receives a notice for real or personal property taxes directly attributable to the installation of the Sign; **LESSEE** shall pay these taxes before the due date. **LESSEE** shall have the right to protest the amount of any such assessment and **LESSOR** agrees to execute any and all documentation required by the assessor to permit **LESSEE** to submit and execute such protest.
12. **LESSOR** may terminate this Lease upon two hundred seventy (270) days' written notice to **LESSEE** that the City Council of the City of Wichita has taken action requiring the property for a specific public purpose. **LESSOR** to give proper notice to **LESSEE** so as to allow **LESSEE** to attend and speak at such meeting(s).
13. If required by **LESSEE**, **LESSOR** will execute and acknowledge a memorandum of lease suitable for recordation. In addition to the foregoing, **LESSOR** authorizes and appoints **LESSEE** as **LESSOR's** agent, representative, and attorney in fact for the limited purpose of executing on behalf of **LESSOR** such memorandum of lease and any amended memoranda of lease that are

necessary or desirable to correct, amend, or supplement any matter set forth in such memorandum. LESSOR further authorizes LESSEE to perform all acts that are incidental to or necessary for the execution and recordation of such memorandum or memoranda.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04 / 01 / 2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:

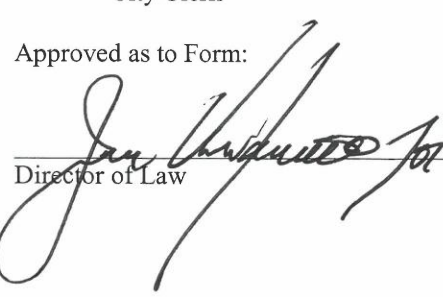

Director of Law

EXHIBIT A
Lease #432-1052-02
13750 W. Kellogg, aka MM 206.570 US-54
P#23912



13900 W. Kellogg
P#20302

13650 W. Kellogg
P#20522

13750 W. Kellogg
P#23912

Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

X Renewal
432-1052-03 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

13650 W. Kellogg, aka MM 206.688 US-54, P#20522

Referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin July 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Four Hundred Fifty (\$450.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Should **LESSEE's** installation of the sign result in a taxable event, as decided by Sedgwick County, involving personal property, real property or usage taxes, **LESSEE** agrees to pay any portion of the real or personal property taxes which may be assessed upon the leased premises, or upon the Sign, however, that **LESSOR** agrees to, within ten (10) business day of receipt of a tax bill for such taxes, forward the same to **LESSEE**. If **LESSEE** receives a notice for real or personal property taxes directly attributable to the installation of the Sign; **LESSEE** shall pay these taxes before the due date. **LESSEE** shall have the right to protest the amount of any such assessment and **LESSOR** agrees to execute any and all documentation required by the assessor to permit **LESSEE** to submit and execute such protest.
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14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04 / 01 / 2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

**LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER**

W-9 Name (as shown on your Income Tax Return)

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

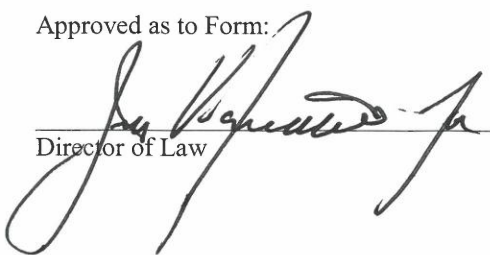
455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:



Director of Law

EXHIBIT A
Lease #432-1052-03
13650 W. Kellogg, aka MM 206.688 US-54
P#20522



Lamar Co # 432 _____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-0604-01 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides
WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

750 E. Pawnee

Legal Description S 300 FT DEPOT RES SHEARMAN & BEATTIES SUB. TAKEN BY COND. CASE #03CV-00934

Legal description included here and referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin August 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Eight Hundred Sixteen (\$816.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

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10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
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desirable to correct, amend, or supplement any matter set forth in such memorandum. LESSOR further authorizes LESSEE to perform all acts that are incidental to or necessary for the execution and recordation of such memorandum or memoranda.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

LESSOR: City of Wichita

BY: 

BY: _____

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: 04/01 / 2022

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address

48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

PIN 00125869

Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

2901 S. Kansas Ave
Wichita, KS

Address of LESSOR:

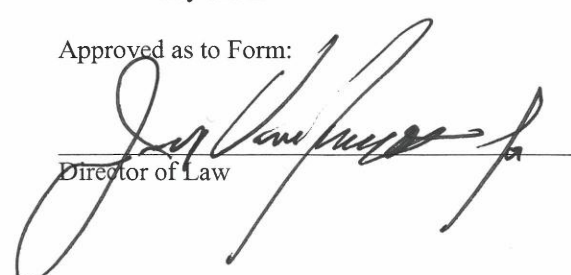
455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:



Director of Law

Lamar Co # 432_____

This Instrument Prepared by:

James R. McIlwain
5321 Corporate Boulevard
Baton Rouge, Louisiana 70808

New
X Renewal
432-0229-01 Lease #

James R. McIlwain

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this _____ day of _____, 2022, by and between:

City of Wichita

(hereinafter referred to as "Lessor") and **THE LAMAR COMPANIES** (hereinafter referred to as "Lessee"), provides
WITNESSETH

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are a portion of the property located in the County of Sedgwick, State of Kansas, more particularly described as:

138 N. Washington

Legal	BEG 101 FT S INTSEC E LI WASH AVE & S LI FIRST ST TH S 50 FT E 120 FT N 50 FT W TO
Description	BEG - BEING PT LOT 2 MATHEWSON'S ADD.

Legal description included here and referenced as Exhibit A, which description also includes a sketch or more detailed survey of the location of the sign on the LESSOR's property)

1. This Lease shall be for a term of Twenty (20) years commencing on the first day of the calendar month, this is a renewal Lease, the term and payments begin March 1, 2022 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions with an 11% increase to the base for the additional term. Said renewal term shall automatically go into effect unless LESSEE or LESSOR shall give to the other party, written notice of non-renewal at least ninety (90) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of Two Hundred Forty two (\$242.00) Dollars, payable annually year or 11% of GROSS SALES, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in annual installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The first base payment due on the first day of the month of commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. **LESSOR** agrees not to erect or allow any other off-premise advertising structure(s), other than **LESSEE's**, on property owned or controlled by **LESSOR** within five hundred (500) feet of **LESSEE's** Sign. **LESSOR** further agrees not to erect or allow any other obstruction of the road/highway view or any vegetation on **LESSOR's** property or contiguous property controlled by **LESSOR** excluding public rights of way, which may obstruct the road/highway view of **LESSEE's** sign. **LESSEE** is hereby authorized to remove such other advertising structure, obstruction, or vegetation at **LESSEE's** option.
4. **LESSEE** may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in **LESSEE'S** opinion the location becomes economically or otherwise undesirable. If **LESSEE** is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, **LESSEE** may elect to terminate this lease. In the event of termination of this Lease prior to expiration, **LESSOR** will return to **LESSEE** any unearned rentals on a pro rata basis.
5. All structures, equipment and materials placed upon the premises by the **LESSEE** or its predecessor shall remain the property of **LESSEE** and may be removed by **LESSEE** at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. If the Structure(s) is/are removed for any reason, the above-ground portions of the Structure(s) and foundations, to one (1) foot below site surface, need to be removed. At the termination of this lease, **LESSEE** agrees to restore the surface of the premises to its original condition. The **LESSEE** shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of **LESSEE'S** sign, at the sole discretion of **LESSEE**. All such permits and any nonconforming rights pertaining to the premises shall be the property of **LESSEE**.
6. **LESSOR** represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant **LESSEE** free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. **LESSOR** is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.
7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.
8. **LESSEE** shall be responsible for carrying such insurance as is reasonable on the improvements up until the date of removal. **LESSEE** hereby agrees and covenants to indemnify and hold harmless the **LESSOR** from any and all actions and claims of whatever kind or nature might arise as a result of removal of a structure.
9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE'S** sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.
10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.
11. Should **LESSEE's** installation of the sign result in a taxable event, as decided by Sedgwick County, involving personal property, real property or usage taxes, **LESSEE** agrees to pay any portion of the real or personal property taxes which may be assessed upon the leased premises, or upon the Sign, however, that **LESSOR** agrees to, within ten (10) business day of receipt of a tax bill for such taxes, forward the same to **LESSEE**. If **LESSEE** receives a notice for real or personal property taxes directly attributable to the installation of the Sign; **LESSEE** shall pay these taxes before the due date. **LESSEE** shall have the right to protest the amount of any such assessment and **LESSOR** agrees to execute any and all documentation required by the assessor to permit **LESSEE** to submit and execute such protest.
12. **LESSOR** may terminate this Lease upon two hundred seventy (270) days' written notice to **LESSEE** that the City Council of the City of Wichita has taken action requiring the property for a specific public purpose. **LESSOR** to give proper notice to **LESSEE** so as to allow **LESSEE** to attend and speak at such meeting(s).
13. If required by **LESSEE**, **LESSOR** will execute and acknowledge a memorandum of lease suitable for recordation. In addition to the foregoing, **LESSOR** authorizes and appoints **LESSEE** as **LESSOR's** agent, representative, and attorney in fact for the limited purpose of executing on behalf of **LESSOR** such memorandum of lease and any amended memoranda of lease that are

necessary or desirable to correct, amend, or supplement any matter set forth in such memorandum. LESSOR further authorizes LESSEE to perform all acts that are incidental to or necessary for the execution and recordation of such memorandum or memoranda.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company AND the City of Wichita.

LESSEE: THE LAMAR COMPANIES,

BY: 

BY: Brian Latta
VICE-PRESIDENT/GENERAL MANAGER

DATE: 04/01/2022

LESSOR: City of Wichita

BY: _____

BY: Brandon J. Whipple
Mayor, City of Wichita

DATE: / /

LESSOR'S TELEPHONE NUMBER

Email address
48-6000653

LESSOR'S SOCIAL SECURITY NUMBER /
EMPLOYER IDENTIFICATION NUMBER

W-9 Name (as shown on your Income Tax Return)

PIN 00120861
Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:
2901 S. Kansas Ave
Wichita, KS

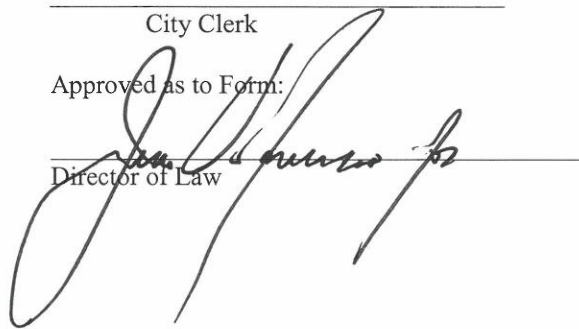
Address of LESSOR:
455 N. Main Street
Wichita, KS 67202

ATTEST (LESSEE)

ATTEST (LESSOR)

City Clerk

Approved as to Form:



Director of Law

EXHIBIT A

Lease #432-0229

138 N. Washington

**Legal
Description**

BEG 101 FT S INTSEC E LI WASH AVE & S LI FIRST ST TH S 50 FT E 120 FT N 50 FT W TO
BEG - BEING PT LOT 2 MATHEWSON'S ADD.



Billboard location

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Wichita Bicycle Master Plan Update

INITIATED BY: Wichita Transportation Department

AGENDA: Consent

Recommendation: Authorize signatures on the Kansas Department of Transportation (KDOT) Form 1312 and a subsequent Cooperative Agreement for Funding with KDOT. These actions will obligate federal funds which are programmed in the Transportation Improvement Program (TIP) and allow the City of Wichita to proceed with the project.

Background: In June 2020, the City of Wichita Transportation Department was awarded the Transportation Alternatives (TA) grant through the Wichita Area Metropolitan Planning Organization (WAMPO) to update the Bicycle Master Plan. The project was added to the TIP in federal fiscal year 2022.

Analysis: The last update to the Wichita Bicycle Master Plan was approved by City Council in 2013. The strategies, goals, objectives, and policy recommendations within the 2013 plan will be reassessed through public outreach and updated to reflect the current priorities of the community. The work product is envisioned as a Master Plan and Action Plan which includes a prioritized list of projects. This will offer the City a process and plan that leads from underlying principles to quick actions and improvements.

Financial Considerations: Total project cost is \$458,735. WAMPO is funding \$366,988 of the cost, and the local/City match (20%) is \$91,747. In addition, WAMPO is complementing this effort with a regional plan using another funding source. The final work product will clearly differentiate between the City of Wichita Plan and the Regional Plan.

Legal Considerations: The Law Department has reviewed and approved the contracts as to form.

Recommendations/Actions: It is recommended that the City Council approve the contracts and authorize the necessary signatures.

Attachments:

- KDOT Form 1312
- WAMPO TIP

NON-INFRASTRUCTURE PROJECT REQUEST

<input checked="" type="checkbox"/> New Project	<input type="checkbox"/> Amend Existing Project
Program Year: 2022	Funding Program: TA (Transportation Alternatives)

KDOT District	MPO	MPO TIP #
5	WAMPO	40-525

County	City	Desired Start Date:
Sedgwick	Wichita	June 1, 2022

Project Sponsor / Lead Agency (LPA)		
City of Wichita		
Project Mgr / Contact	Phone	E-mail Address
Tia Raamot	3163254855	traamot@wichita.gov

Project Title:	Wichita Bicycle Mater Plan Update
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WHEREAS, the Secretary of Transportation, Kansas Department of Transportation and the Local Public Authority (LPA) are empowered by the laws of Kansas to enter into agreements for the improvement of roads, streets and congestion mitigation activities, and upon approval by the Secretary, intend to enter into an Agreement for _____ Wichita Bicycle Mater Plan Update _____ (project Title) and,”

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project, now, therefore,

WHEREAS, _____ City of Wichita _____ requests the Secretary program the following project:

Project Cost Estimate			
<i>Funding</i>	<i>Participating</i>	<i>Non-Participating</i>	<i>Total</i>
Federal Funds	\$ 366,988.00	\$ -	\$ 366,988.00
Local Funds	\$ 91,747.00	\$ -	\$ 91,747.00
Project Totals	\$ 458,735.00	\$ -	\$ 458,735.00

NON-INFRASTRUCTURE PROJECT REQUEST

BE IT RESOLVED: That sufficient funds from City of Wichita

are now, or will be, available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the LPA are ineligible for federal funding and remain the responsibility of the LPA. Upon cancellation of the project by the LPA, the LPA shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day: _____ Month: _____ Year: _____

Please sign below in accordance with your local policy.

Recommended for Approval:

Appropriate Local Official(s)

Mayor

City Council

ATTEST:

City Council

City Clerk

City Attorney

Include a copy of the TIP with the submission of this form.

Lead Agency Transit - Wichita Transit

WAMPO I.D. 40-525

KDOT Project I.D.

Last TIP Action 21-00

Project Title

Wichita Bicycle Master Plan Update

Project Limits

Wichita city limits

Project Scope

Update the Wichita Bicycle Master Plan and implement a bicycle parking program.

Primary Mode

Ped/Bike

Bike/ped component? ☒

Partially or Fully in:

Butler County☐ Sedgwick County☒ Sumner County☐

Administrative Contact

Raven Alexander

Wichita Transit

(316)352-4868

Ralexander@wichita.gov

Engineering Contact

Scott Wadle

Wichita Transit

(316)352-4855

swadle@wichita.gov

FFY	Fund Type	AC/ACCP	AC Fund Source	UT	PE	ROW	CON	CE	IMP	CAP	OP	Total
2022	Federal: MPO-TA				\$0	\$366,988	\$0	\$0	\$0	\$0	\$0	\$366,988
2022	Local				\$0	\$91,747	\$0	\$0	\$0	\$0	\$0	\$91,747
Total (using AC, not ACCP)					\$0	\$458,735	\$0	\$0	\$0	\$0	\$0	\$458,735
Total (using ACCP, not AC)					\$0	\$458,735	\$0	\$0	\$0	\$0	\$0	\$458,735

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: HOME American Rescue Plan Consultant

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the HOME American Rescue Plan (ARP) consultant contract with Development Strategies Inc. and authorize the necessary signatures.

Background: On December 21, 2021, the City Council approved the HOME-ARP Grant Agreement with the U.S. Department of Housing and Urban Development (HUD) allocation of \$275,418 for administrative and planning costs, which represents 5% of the grant award. The full award amount is \$5,508,372 to which the City must develop a HOME-ARP Allocation Plan that meets the requirements of the implementing notice issued by HUD in order for the full grant amount to be released to the City.

Generally, HOME-ARP funding must be used to provide housing, services, and shelter to individuals experiencing homelessness and other vulnerable populations. The funding can be used for four eligible project activities and administration:

- the production or preservation of affordable housing;
- tenant-based rental assistance;
- supportive services, including homeless prevention services and housing counseling;
- the purchase or development of non-congregate shelter for individuals and families experiencing homelessness; and
- an amount not exceeding 15 percentage of the total grant award (\$826,255) may be used for administrative and planning expenses.

The City Council agenda item from December 21, 2021, noted that staff planned to procure the services of a consultant to conduct consultation and public participation processes and prepare the City's HOME-ARP allocation plan.

Staff prepared and issued a Request for Proposals (RFP) on February 2, 2022, soliciting consultation services to facilitate public engagement and develop an Allocation Plan per HUD requirements. Two proposals were received. The selection committee unanimously recommended the Development Strategies, Inc. proposal, in accordance with Administrative Regulations 1.2 and 1.2a.

Analysis: Proposals were reviewed and ranked in accordance with the evaluation criteria outlined in the RFP. Respondents were scored on responses based on eight criteria which included experience, qualifications, project approach, project schedule, and proposed costs among other items.

The selected firm was founded in 1988 and is a national expert in housing policy and strategy. Development Strategies, Inc. has completed or is currently engaging in several projects in Kansas and the Midwest dealing with affordable housing needs and is currently assisting Topeka, Kansas to develop its Allocation Plan for HOME-ARP funding as well. The firm is partnering with HomeBase, which is a national non-profit organization whose mission is to build community capacity to end homelessness and

reduce poverty, and to foster thriving, inclusive communities. HomeBase is recognized as an expert on homelessness and housing programs. HomeBase will serve as a technical advisor, facilitator, and implementer for the full range of homeless services and interventions. The proposed scope of work will be completed in three phases:

- consultation with local providers and experts,
- analysis of needs and gaps around homelessness; and
- reporting findings and gathering feedback.

From these activities, Development Strategies Inc. will finalize a draft Allocation Plan and present it to City Council for approval prior to staff submitting the plan to HUD as an amendment to the City's Consolidated Plan as required.

The amount of the contract is not to exceed \$67,700, which includes an alternative option up to \$15,000 to create a public education campaign in order to generate public awareness of homeless issues to increase long-term support for proposed interventions as a result of the finalized Allocation Plan.

Financial Considerations: There is no impact to the General Fund.

Legal Considerations: The Law Department has reviewed and approved the contract document as to form.

Recommendation/Action: It is recommended the City Council approve the HOME American Rescue Plan (ARP) consultant recommendation with contract and authorize the necessary signatures.

Attachment: Contract.

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made between the City of Wichita, Kansas (hereinafter referred to as the City) and Development Strategies, (hereinafter referred to as the Contractor) on the _____ day of April 2022.

WHEREAS, the City desires to employ the services of the Contractor to prepare the required allocation plan for the HOME American Rescue Plan (ARP) funds; and

WHEREAS, the City has sought competitive bids for this purpose under Proposal No. FP-220025, and Contractor has submitted the bid most beneficial to the City, and

WHEREAS, the Contractor is desirous and capable of providing the services required.

NOW, THEREFORE, the parties agree as follows:

1. **Term.** The work under this Agreement shall begin on the contract approval and extend for one (1) year, unless the term is extended by the written agreement of the parties.
2. **Services to be Performed by the Contractor.** The Contractor shall perform the services described in the attached Scope of Services (Exhibit C) except as hereafter amended by the agreement of the parties.
3. **Billing and Payment.** The services rendered by the Contractor pursuant to this Agreement shall be compensated on the basis shown in Exhibit D, not to exceed a total amount of Sixty Seven Thousand Seven Hundred Dollars (\$67,700.00), which is inclusive of the Public Education Campaign Services add on. Incremental payments for services actually provided shall be remitted upon receipt of invoice not more frequently than monthly.
4. **Incorporation.** The attached exhibits A, B, C and D are made a part of this Agreement by reference.
5. **Termination by the City.** If, for any cause, the Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination. The City may terminate this contract at any time by a notice in writing from the City to the Contractor. If the contract is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Contractor covered by this contract, less payments of compensation previously made.

6. ***Termination by the Contractor.*** The Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective thirty (30) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies.
7. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.
8. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Sally Stang
Director of Housing & Community Services
455 N. Main 10th floor
Wichita, Kansas 67202
316-462-3795

(b) Representing the Contractor:

Andy Pfister, AICP *Senior Associate*
10 South Broadway, Suite 1500
St. Louis, MO 63102
314-421-2800

9. ***Insurance and Indemnification.***

- A. Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

The **Successful Bidder** will be required to furnish a Certificate of Insurance (prior to the Agreement) with the following minimum coverage:

1. Commercial General Liability

Covering premises---operations, xcu hazards, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
Property Damage Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate

Or

Bodily Injury and Property Damage \$1,000,000 Each Occurrence
Liability (Combined Single Limit) \$2,000,000 Annual Aggregate

2. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability \$1,000,000 Each Occurrence

Property Damage Liability \$1,000,000 Each Occurrence

Or

Bodily Injury and Property Damage \$1,000,000 Each Occurrence
Liability (Combined Single Limit)

3. Workers' Compensation to meet Statutory requirements.

4. Employers Liability \$1,000,000 Each Accident
\$1,000,000 Occupational Disease
\$2,000,000 Annual Aggregate

5. Professional Liability (Claims made basis) \$1,000,000 Each Claim
\$1,000,000 Annual Aggregate

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured on the CGL and Auto Liability policies. The policy shall also provide coverage for contractor's/vendor's contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor's existing policy.

The Certificate of Insurance must be submitted **within ten (10) days** after notification of award to the City of Wichita Purchasing Manager, City Hall, 12th Floor, 455 North Main, Wichita, Kansas, 67202-1694.

B. Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

10. ***Prohibition against Assignment and delegation.*** Notwithstanding any other provision of this Agreement, the Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust, company, or other financing institution. None of the Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

11. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

12. ***Records, Report and Inspection.***

A. Establishment and Maintenance of Records. The Contractor shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Contractor shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Contractor, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Contractor shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

13. ***Discrimination.***

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Contractor receiving funds pursuant to this contract.

B. Development Strategies Inc. will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Contractor has fifteen or more employees, the Contractor is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Contractor's office.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Contractor and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is \$2,500 or more, including, but not limited, to the following:

- a) The Contractor will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.
- b) The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

- c) The Contractor agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Contractor's compliance with The Rehabilitation Act. Such notices shall state the Contractor's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

14. ***Political Activity Prohibited.***

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

15. ***Lobbying Prohibited.*** None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

16. ***Amendments.***

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Contractor mutually agree, changes to this agreement may be effected by placing them in written form and incorporating them into this agreement.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than \$10,000 shall require a written contract amendment. The amendment must be

approved by the City Council and must also be approved and signed by all parties to the original contract.

17. ***Renegotiation.*** This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.
18. ***Other Federal Regulations.*** Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

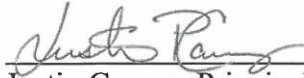
The City of Wichita, KS

Brandon J. Whipple, Mayor

Attest:

Jamie Buster, Deputy City Clerk

Development Strategies



Justin Carney, Principal

Approved as to form:

Jennifer Magana
Director of Law and City Attorney

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that

City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 1/3/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

EXHIBIT C

iii. PROJECT APPROACH

The primary intent of this effort is to work with the City team to create an allocation plan to submit to HUD and guide the use of funds awarded to the City through HOME-ARP. We would work with Housing and Community Services and City leadership to identify related work that is currently underway and align public outreach, public meetings, and other efforts where possible. For instance, we hope to align the proposed public meetings with those being facilitated through Project HOPE and leverage recent efforts led by WSU's Public Policy & Management Center to help Sedgwick County create a strategy to address homelessness.

Our work will be divided into three phases:

- **Understand/Consultation:** During this initial phase, we will carry out conversations with local providers and experts to understand the existing landscape—who is doing what, and what services/programs may be missing. We will begin to gather data around homelessness.
- **Analyze/Needs and Gaps:** Data analysis, synthesizing the lessons learned from the consultations, and research about best practices and innovative solutions will occur during this phase to be able to define, quantitatively and qualitatively, what the needs and gaps are around homelessness. This, along with work sessions with the client team, will inform follow-up meetings with the service providers, and the upcoming public meetings to explore community priorities.
- **Report/Public Meetings:** During this last phase, we will report our findings and thoughts around priorities to the public to gain critical feedback, will finalize the Allocation Plan, and present the findings and recommendations to City Council.

1. Understand / Consultation

- a. Development Strategies will work with the City to identify representatives from the following groups that should be interviewed.
 - i. CoC providers serving the jurisdiction's geographic area;
 - ii. Homeless and domestic violence service providers;
 - iii. Veterans' groups;
 - iv. Public housing agencies (WHA)
 - v. Public agencies that address the needs of the qualifying populations; and,
 - vi. Public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities.
- b. The DS team will schedule and carry out one-hour conversations with each identified group over approximately a four-week period. The conversations will follow HUD's guide for HOME-ARP consultations. Approximately 20 conversations are anticipated.
- c. Feedback from the meetings will be summarized in a concise document meeting HUD's guidelines, including the methodology used.
- d. Two short web-based surveys will be designed to gain perspective about needs and priorities from the general public and homeless service providers.
- e. Three group follow-up sessions will be held to reflect back to the providers and have further discussion.

Deliverables: Summary document including methodology, feedback received, and other takeaways. Documentation will be designed to meet HUD reporting criteria. Draft survey questions will be provided.

2. Analyze / Needs Assessment and Gap Analysis

- a. Build upon the analysis completed for the Affordable Housing Fund process to:
 - i. Identify the characteristics of housing associated with instability and an increased risk of homelessness if the PJ will include such conditions under HUD's definition of "other populations."
 - ii. Identify priority needs for qualifying populations; and,
 - iii. Explain how level of need and gaps in its shelter and housing inventory and service delivery systems was determined.

1. Document what's available now
2. Discuss the plans of the organizations
 - a. Humankind's Campus
 - b. Salvation Army's homeless recovery center
 - c. Union rescue mission's men's shelter
3. Any other pertinent plans
- iv. Existing data and resources maintained by the city and CoC partners, particularly United Way, will be utilized and updated where needed (i.e., HMIS data, other data bases, etc.).
- v. Case study analysis of 3 to 5 innovative permanent homeless housing solutions will be documented to understand best practices and potential uses of the funds.
- vi. Additional research will be undertaken to document the efficacy of different approaches (e.g., emergency services vs. permanent supportive housing; congregate housing vs. shelters).
- vii. Both surveys will be completed during this phase.
- viii. Work session with Client Team to review recommendations and develop a draft Allocation Plan.

Deliverables: HOME-ARP Allocation Plan draft document, including methodology, needs and gaps, case studies and best practices, and recommended use of HOME-ARP funds. Documentation will be designed to meet HUD reporting criteria. Survey results.

3. Public Participation

- a. The DS team will facilitate two public meetings to present information about HOME-ARP and how it is different than other homeless funding and programs. DS will coordinate with Project HOPE and other efforts to avoid overlap.
 - i. Meeting 1 would include presenting education materials about the need for housing for the homeless and highlight best practices to show what a potential grantee could use the funds for.
 - ii. Meeting 2 would focus on reflecting back to the community about what was heard, and to present the plan for feedback.
- b. City staff would coordinate the public meeting(s), following HUD guidelines.
- c. Presentation to City Council.

Deliverables: Presentation slides, description of public participation process, summary of public comments, recommendations received, final HOME-ARP Allocation Plan.

Add-On Service: Public Education Campaign—Working with CoC providers, the WHA, and other partners, we would create a series of short videos, handouts, social media blasts and other materials. Focus would be on educating the public about causes of homelessness, which interventions help the most, and which actually exacerbate the challenges. Cost would depend on the scope of the campaign, and what partners are willing to produce.

iv. SCHEDULE

We are proposing a four- to six-month process. Key task activities and milestones are summarized in the following graphic.

	KICKOFF Month 1	UNDERSTAND Months 1 & 2	ANALYZE Months 2 & 3	REPORT Months 4 & 5
	Establish Schedule	Review Existing Homeless Services and Programs	Needs and Gap Analysis	Refine & Finalize Recommendations
	Request Data		Organizational Assessment	Public Engagement
	Identify Stakeholders	Schedule and Hold Consultations	Best Practices	Documentation
	Survey Needs	Gather HMIS and other Relevant Data	Innovation Case Studies	City Council Presentation
			Follow-Up Group Sessions with Providers	
DELIVERABLES	Coordination Call(s) with Client Team	Consultation Summaries Survey Design	Needs & Gaps Report / Draft Allocation Plan Optional: Launch Public Education Campaign Survey Results	Public Meetings Final Allocation Plan Report Client Team Check-ins

The most significant potential risk to maintaining the above schedule involves coordinating the consultations with homeless service providers because aligning schedules, even over the planned four-week period for those conversations, is always a challenge. We will work with the Client Team at the project onset to identify the providers, introduce the project to the providers, and detail the importance of participating in the consultations in order to set up that process for success. We will also allow for a range of times and dates for the meetings so that it is easy for the providers to select one that is convenient.

A second potential risk is coordinating and setting up the dates and locations for the public meetings. We will also work with the Client Team at the onset to coordinate these important meetings early in the process, and will rely on C3S's recent experience coordinating and facilitating listening sessions around similar topics.

We have substantial experience coordinating, facilitating, and, ultimately, executing successfully and informative stakeholder conversations and public meetings.

EXHIBIT D

B. COST PROPOSAL

The following table summarizes our cost proposal by project phase and deliverables. The total estimated not-to-exceed budget is **\$52,700**, which includes \$3,200 in reimbursable travel expenses that will allow team member to travel from our St. Louis office to support consultations and public meetings.

Wichita HOME-ARP Allocation Plan: Estimated Cost Proposal

<i>Phase</i>	<i>Amount</i>	<i>Cumulative Amount</i>	<i>Est. Staff Hours</i>	<i>Milestone / Deliverables</i>
Project Kickoff	\$ 5,000	\$ 5,000	30	Consultation List & Schedule
Understand / Consultations	\$ 12,500	\$ 17,500	76	Consultation Summary; Draft Survey Questions
Analyze / Needs & Gaps	\$ 17,000	\$ 34,500	103	Needs & Gap Analysis; Draft Presentation; Draft Report; Survey Results
Report / Public Meetings	\$ 15,000	\$ 49,500	91	Public Meeting 1 & 2; Final Presentations; Final Report
	\$ 49,500		300	
	\$ 3,200		16	NTE Travel Time and Reimbursable Expenses
	\$ 52,700		316	Total Not-to-Exceed Budget

The proposed scope of services and fee structure include two items that are beyond the bare minimum needed to complete an Allocation Plan per HUD guidelines:

- First, we included a study of best practices along with case studies of innovative solutions to provide clear examples of services and housing options that are not currently implemented in Wichita, and could emerge as priorities for this funding given their effectiveness. In our experience, these elements add considerable value to projects like this and is important to creating a plan that strategically leverages these funds to have maximum long-term impact on meeting current needs and gaps relating to homelessness.
- Second, we included a second public meeting in our scope because the conversation around homelessness is complex and difficult. It is important to give people the opportunity to process this information. It is also important to show that we, and the City, listened during the process to build trust, and show that key insights are incorporated into the plan.

Add-Ons: We also included an optional element: a Public Education Campaign. This effort is proposed as an optional item because it is not needed to create a HOME-ARP Allocation Plan. However, increasing the general public's knowledge of homeless issues with factual information about the existing challenges and interventions that are most effective, will increase long-term support. The cost to provide these additional services would range from **\$12,000 to \$15,000**, depending on the number of videos we would create, as well as other public-facing content.

C. FINANCIALS

Development Strategies does not utilize external audit services—all financials are regularly reviewed through internal processes. Unaudited financial statements are available upon request.

D. LICENSING AND INSURANCE

Development Strategies carries the applicable coverages and amounts stated in the RFP. Our current insurance declarations page is included as an attachment.

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: Contract for Operation and Management of Parking Garages, Lots, and Meters

INITIATED BY: Wichita Transportation Department

AGENDA: Consent

Recommendation: Approve the contract and authorize the necessary signatures.

Background: In February of 2016, the City of Wichita and The Car Park, Inc. (TCP) entered into a second contract for management of the City Hall parking complex, three other parking garages, and various City-owned surface lots. The contract called for a one-year term and four one-year extensions with one amendment for an additional year of service. All available extension options and the amendment has been exercised under the contract. Currently, the inventory managed under the contract includes four garages and four surface lots totaling approximately 2,880 spaces. In addition, the management company is responsible for event parking in 13 lots with approximately 2,180 spaces.

Analysis: A Request for Proposal (RFP) was issued on November 23, 2021 and sent to management companies nationwide. Along with the garages and lots, the RFP included parking meter collection which was previously on a separate contract. Four responses were received. The staff screening selection committee reviewed the proposals and chose to interview all four companies. After the interviews, the committee determined that TCP's proposal best met the City's needs for current parking management and future mobility plans.

Financial Considerations: The current monthly fee for garages, parking lots, and meter collection is \$27,428.25. Additionally, management fees for the current inventory of 13 lots contracted for event parking total \$1,675 per event. The new monthly fixed fee contract for garages, parking lots, and meter collection is \$29,421. Event parking fees will vary based on which lots are open per event. These amounts will be paid from downtown parking funds and reserves.

Legal Considerations: The Law Department has reviewed and approved the contracts as to form.

Recommendations/Actions: It is recommended that the City Council approve The Car Park contract and authorize the necessary signatures.

Attachment: Contract

CONTRACT 22200017

for

Operation and Management of Parking Garages, Lots and Meter Collection

THIS CONTRACT entered into this 1st day of May 2022, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **THE CAR PARK**, whose principal office is at 702 W. Idaho Street, Suite 400, Boise, ID 83702, Telephone Number (208) 336-6597, hereinafter called "**CONTRACTOR**".

WHEREAS, the **CITY** has solicited proposals for the **Operation and Management of Parking Garages, Lots, and Meters** (solicitation number 210363), and

WHEREAS, **CONTRACTOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

Scope of Services: **CONTRACTOR** shall provide to the **CITY** those services specified in its response and presentation to Formal Proposal Number 210363, which are incorporated herein by this reference the same as if it were fully set forth. **CONTRACTOR** shall meet the representations made in that Proposal in all the following areas of performance:

1. Operations Team, pp. 32-41
2. Partnering and Stakeholder Engagement, pp. 17-18 and 30-31
3. Period of Operations, pp. 39
4. Personnel, pp. 35-45,
5. Routine Maintenance, pp. 19-20 and 50-52
6. Required Reports, pp. 49
7. City Record Access, pp. 43
8. Revenue Collection and Monitoring, pp. 46-49
9. Audits, 43, 54-55 and 59-60
10. Safety Security and Emergency Procedures, pp. 56-58
11. Plans, pp. 21,42
12. Subcontractors, pp. 19-20
13. Parking Rules, pp. 19-20
14. Insurance, pp. 16-17
15. License and permits, pp. 5-7
16. Inspections and Surveys, pp. 25
17. Expenses, pp. 35, 49
18. Parking Meter Collection, pp. 52-53

2. **Compensation (Option 1 Services and Pricing).** CITY agrees to pay to **CONTRACTOR** a monthly fixed fee of \$29,421 for the **Operation and Management of Parking Garages, Lots, and Meters. Event Parking** will vary per event depending upon the lots used. **CONTRACTOR** agrees to bill **CITY** on or before the 15th day of each month following the end of the first month, during the term of this contract, and operating allowance for the preceding month for the **Transportation Department** as per the proposal, plans, specifications, addenda and Contractor's proposal of January 20, 2022, and as approved by the City Council on the solicitation number – 210363 for the Transit Department, Transportation Division on April 19, 2022.

PARKING FACILITIES

1. City Administrative Center Garage Complex	<u>\$12,080.25</u>
2. 121 South Emporia Garage	<u>\$ 3,647.25</u>
3. Block One Parking Garage	<u>\$ 3,789.50</u>
4. Parking at Market and William	<u>\$ 4,364.25</u>
5. Miscellaneous Surface Lots	<u>\$ 3,299.75</u>
Lot 1 – 225 Spaces 200 S. Broadway	<u>\$ 1,241.00</u>
Lot 2 – 189 Spaces 3rd and Main	<u>\$ 1,292.50</u>
Lot 3 – 235 Spaces First and Waco	<u>\$ 610.50</u>
Lot 4 – 27 Spaces 115 N. St. Francis	<u>\$ 155.75</u>
<u>TOTAL MONTHLY FACILITY FEE</u>	<u>\$27,181.00</u>

PARKING METERS (Monthly Fee) \$2,240.00

1. Metered lot at 100 W. 3rd Street – City Hall
2. Metered lot at 100 W. English – old main Library
3. Metered lot at northwest corner of Main and Century II Drive
4. Metered lot at 225 W. Douglas – Exhibit Hall and Century II
5. Metered lot at 325 W. Main
6. On-street meters in 100 Block of E. 3rd Street
7. On-street meters in 400-500 Blocks of N. Market
8. On-street meters in 100 Block of E. Elm
9. On-street meters in 600-700 Blocks of N. Main
10. On-street meters in 220 Block of N. Waco
11. On-street meters in 200 Block of N. Water

12. On-street meters in 200-300 Blocks of N. Market
13. On-street meters in 100-200 Blocks of W. 1st Street
14. On-street meters in 100-300 Blocks of W. 1st Street
15. On-street meters in 100 Block of W. English
16. On-street meters in 100-400 Blocks of E. English
17. On-street meters in 200-300 Blocks of S. Market
18. On-street meters in 200 Block of S. Topeka
19. On-street meters in 100-300 Blocks of E. William
20. On-street meters in Century II Drive and private drive to the south
21. On-street meters in 100 Block of E. Beacon Lane

EVENT PARKING LOTS

<u>Lot Number</u>	<u>Address / Named</u>	<u>Spaces</u>	<u>Per Event Fee</u>
1	121 S. Emporia	650	\$250.00
2	200 S. Broadway / Lot B		\$100.00
	321 E. William	255	\$100.00
3	584 S. Emporia	196	\$ 85.00
4	777 E. Waterman / Thunder	470	\$ 85.00*
5	301 S. Emporia	27	\$ 85.00
6	332 S. Topeka / Thunder	82	\$ 85.00
7	400 S. Topeka / Thunder	84	\$100.00
8	214 S. Topeka / Thunder	32	\$100.00
9	100 S. Sycamore / Monarch	80	\$165.00
10	525 W. Douglas / Church	100	\$165.00
11	505 W. Maple / Ice Center	60	\$125.00
12	711 W. Douglas / Credit Union	90	\$165.00
13	200 S. Walnut / Senior Services	70	\$ 75.00

***As is currently in place \$200.00 for large events**

City may add or delete facilities or modify coverage within facilities with commensurate price adjustments by giving Contractor thirty (30) days written notice of its intent thereof.

Contractor will submit on the fifteenth (15th) day of each month following the end of the first month all monthly reports and invoices for the allowances to be paid by the City of Wichita to Contractor. The monthly reports should include but not be limited to the following information:

Contractor shall furnish a separate monthly revenue report statement for each parking facility.

Each report statement shall include daily revenue, total monthly revenue, and all project-related expenses.

3. **Term.** The initial contract will be for a period of one (1) year beginning **May 1, 2022, through April 30, 2023.** The contract may be renewed under the same terms and conditions in one (1) year increments for a period not to exceed a total contract period of five (5) years if mutually agreeable between the parties a minimum of sixty (60) days prior to each annual expiration period. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **CONTRACTOR.**

4. **Indemnification and Insurance.**

a. **CONTRACTOR** shall save and hold the **CITY** harmless against all suits, claims, damages, and losses for injuries to persons, property, or other liability loss arising from or caused by errors, omissions, or negligent acts of **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Commercial General Liability covering premises—operations, xcu hazards, Product/Completed Operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$2,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$2,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$2,000,000 each aggregate
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2. Comprehensive Automobile Liability - All Owned, hired vehicles with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each accident
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Property Damage Liability	\$1,000,000 each accident
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Or

Bodily Injury and Property Damage
Liability (Combined Single Limit) \$1,000,000 each accident

3. Workers' Compensation to meet Statutory requirements.

4. Excess Liability \$5,000,000 Each Accident
 \$5,000,000 General Aggregate

In addition, the **CONTRACTOR** shall have fidelity and crime insurance coverage at \$100,000 per incident.

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured. The policy shall also provide coverage for Contractor's contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor's existing policy.

5. Incorporation. The attached Exhibit A and B are incorporated into this contract as if fully set forth here.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

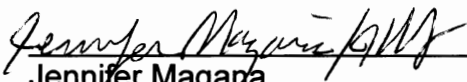
CITY OF WICHITA, KANSAS

Karen Sublett
City Clerk


Brandon Whipple
Mayor

APPROVED AS TO FORM:

THE CAR PARK, INC.



Jennifer Magana
City Attorney and Director of Law



Signature
Jeff Wolfe

Print Name
Chief Executive Officer

Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due to Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data

furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **CONTRACTOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 12/28/2021)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

SECOND READING ORDINANCES FOR April 19, 2022 (FIRST READ April 12, 2022)

a. ORDINANCE NO. 51-737

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF J-T ACQUISITIONS, LLC/LEADING TECHNOLOGY COMPOSITES, INC. SO EXEMPTED.

b. ORDINANCE NO. 51-738

AN ORDINANCE AMENDING SECTION 2.04.235 AND CREATING SECTION 2.04.237 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO CITY COUNCIL.

c. ORDINANCE NO. 51-739

AN ORDINANCE CREATING SECTIONS 2.12.1180, 2.12.1181, 2.12.1182, 2.12.1183 AND 2.12.1184 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO THE AFFORDABLE HOUSING REVIEW BOARD.

d. ORDINANCE NO. 51-740

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.
Case No. ZON2022-00008

e. ORDINANCE NO. 51-741

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.
Case No. A22-04

f. ORDINANCE NO. 51-742

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.
Case No. A22-05

g. ORDINANCE NO. 51-743

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.
Case No. A22-06

h. ORDINANCE NO. 51-744

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE IMPROVEMENT OF AND PROVIDING A TAX LEVY FOR THE COST OF CONSTRUCTION OF SIDEWALKS IN THE CITY OF WICHITA, KANSAS.

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: ZON2022-00010 – City Zone Change from OW Office Warehouse to TF-3 Two-Family Residential to Build Duplexes on Property Located on the West Side of South Hydraulic Avenue and Within One-Quarter Mile North of East 55th Street South (District III)

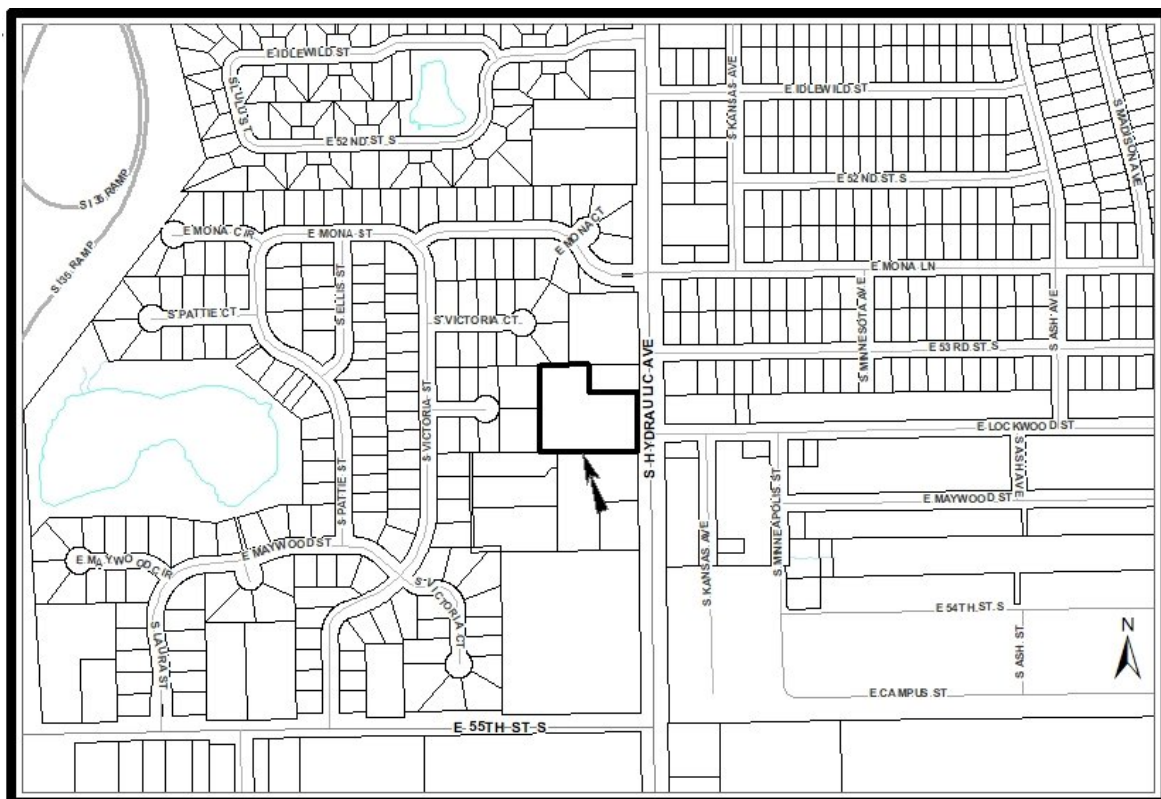
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve (10-0), per staff recommendation.

MAPD Staff Recommendations: Approve.

DAB III Recommendations: Approve (10-0), per staff recommendation.



Background: The applicant is requesting a zone change from OW Office Warehouse to TF-3 Two-Family Residential to permit duplex development. The property is generally located on the west side of South Hydraulic Avenue and approximately 1,000 feet north of East 55th Street South. The site was once part of a large plant nursery/garden center but has been vacant since at least the year 2000.

OW Office Warehouse zoning does not permit residential uses. As seen on the attached exhibit, the applicant intends to replat the property into eight lots and create two internal streets to provide access to each lot. This layout would permit a total eight duplexes or 16 dwelling units.

Properties north and west are zoned SF-5 Single-Family Residential and are developed with single-family dwellings. Property to the south is zoned PUD Planned Unit Development #32 and is designated for commercial, office, personal care and improvement services, indoor recreation and entertainment, retail, restaurant, and outdoor greenhouse uses. Much of the site is vacant and the only existing use is a laundromat. Properties to the east are zoned SF-5 and MH Manufactured Housing and are developed with single-family dwellings and manufactured homes. Development of higher density residential uses at this location can act as a buffer from the permitted commercial development in PUD #32 and the single-family housing to the north.

The Unified Zoning Code does not require screening of TF-3 zoning from any other zoning classification. The Wichita Landscape ordinance does not require any landscaping for developments zoned TF-3. The off-street parking requirement for duplexes is one parking space per dwelling unit.

Analysis: On March 17, 2022, the Metropolitan Area Planning Commission (MAPC) approved the application (10-0). No one spoke in opposition at this public hearing.

On March 2, 2022, District Advisory Board (DAB) III reviewed the request and recommended approval (9-0-1). No members of the public spoke at this public hearing.

No protest petitions were received for the requested zoning change.

The request can be approved with a simple majority vote.

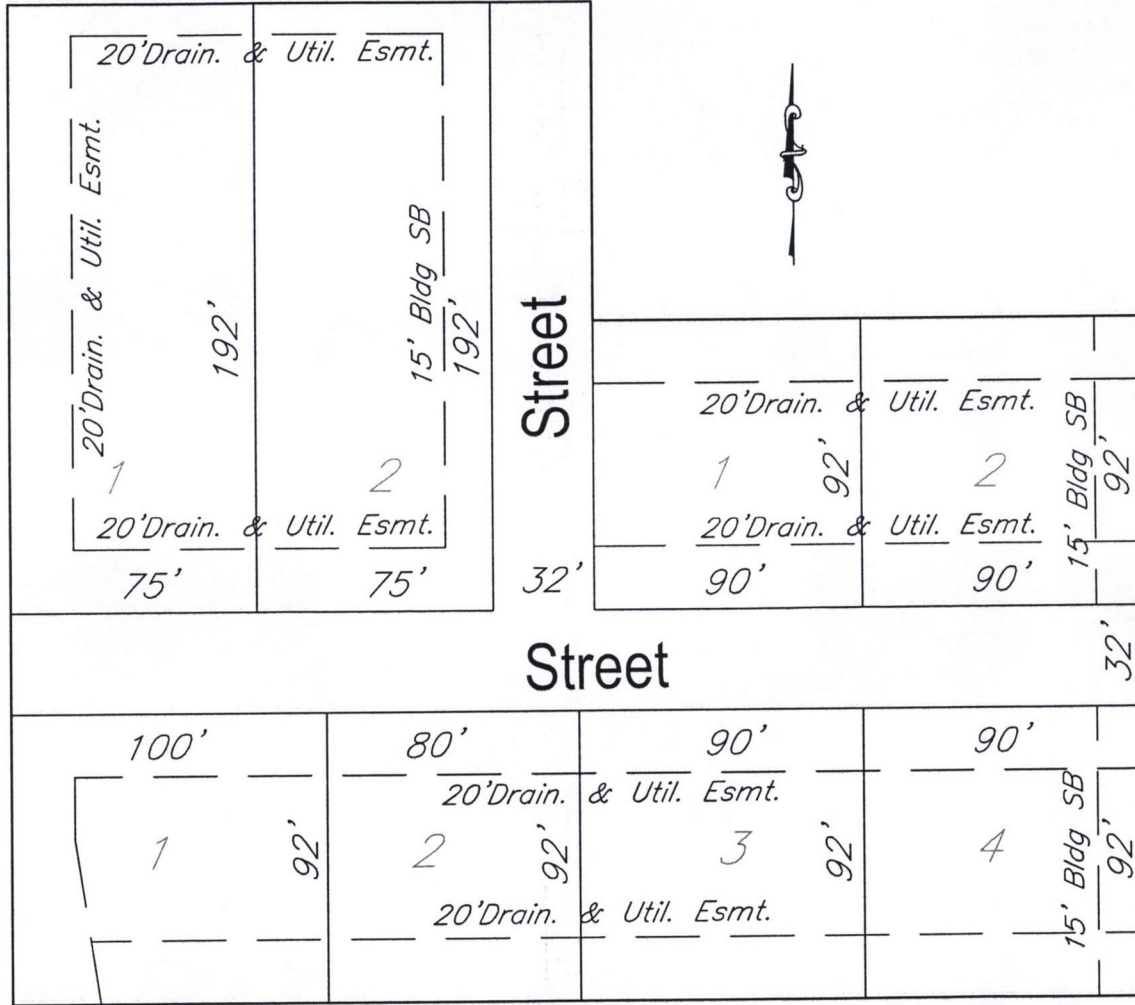
Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes).

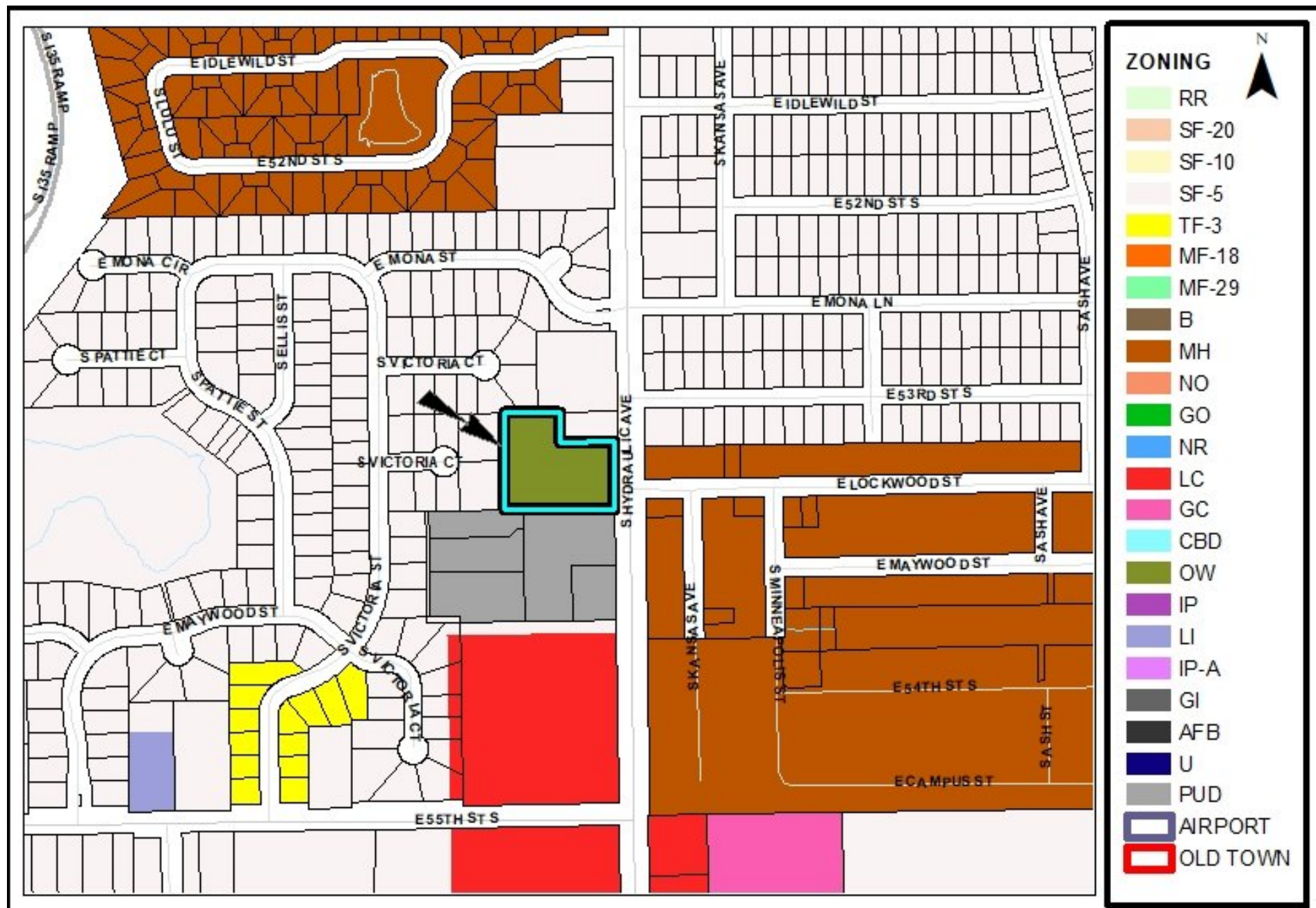
Attachments:

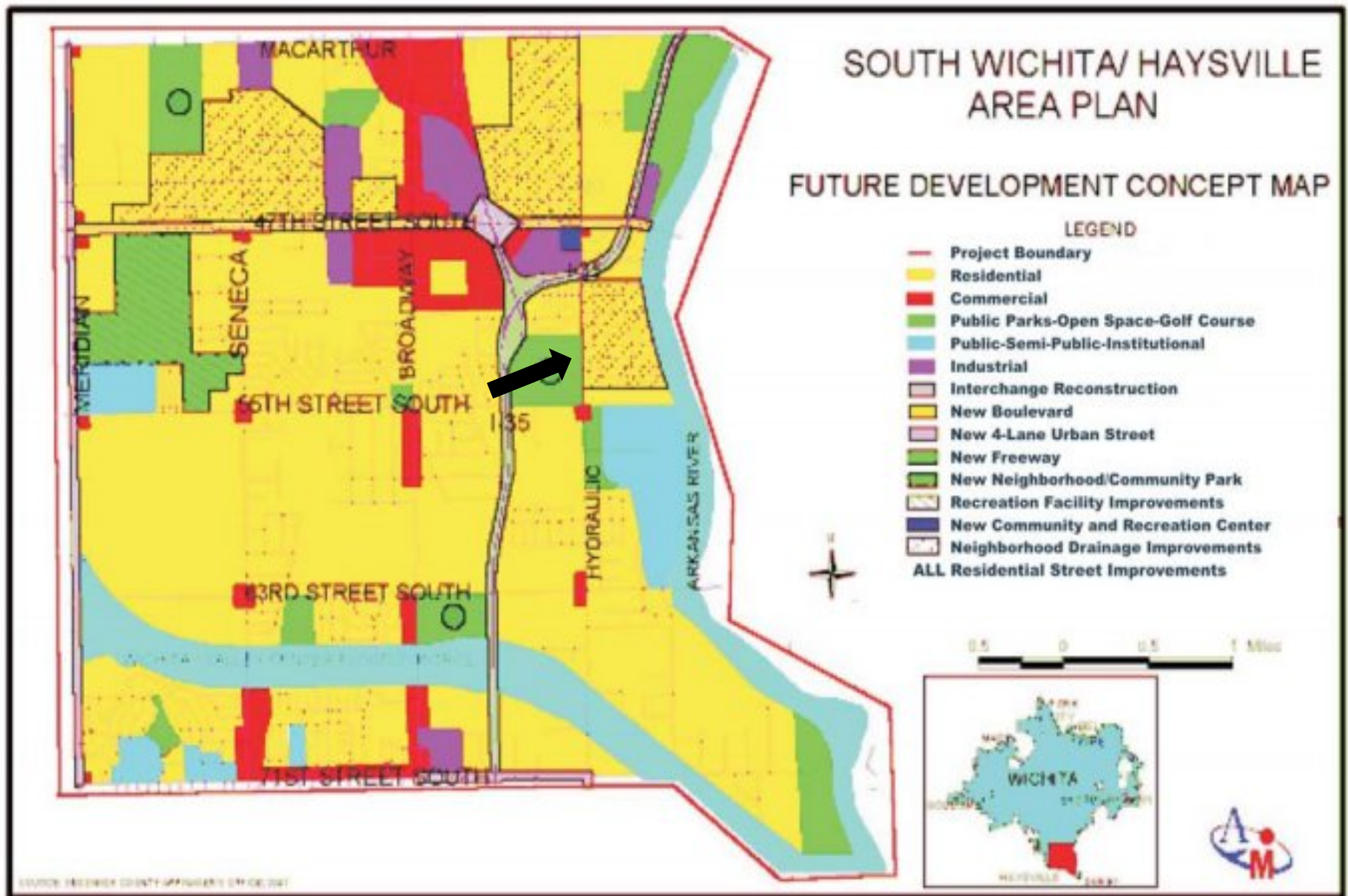
1. Supporting Documents
2. MAPC Minutes
3. DAB III Report
4. Ordinance



Hydraulic







Looking north at and away from site



Looking northwest at site



Looking southwest away from site



Looking southeast away from site



Looking northeast away from site



**EXERPT MINUTES FOR MARCH 17, 2022 WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION MEETING**

4.4 ZON2022-00010: City zone change from OW Office Warehouse to TF-3 Two-Family Residential to build duplexes on property located on the west side of South Hydraulic and within one-quarter mile north of East 55th Street South.

Lot 1, Block A, Dan Schmidt Addition, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting a zone change from OW Office Warehouse to TF-3 Two-Family Residential to permit duplex development. The property is generally located on the west side of South Hydraulic Avenue and approximately 1,000 feet north of East 55th street South. The site was once part of a large plant nursery/garden center but has been vacant since at least the year 2000.

OW Office Warehouse zoning does not permit residential uses. As seen on the attached exhibit, the applicant intends to replat the property into eight lots and create two internal street to provide access to each lot. This layout would permit a total eight duplexes or 16 dwelling units.

Properties north and west are zoned SF-5 Single-Family Residential and are developed with single-family dwellings. Property to the south is zoned PUD Planned Unit Development #32 and is designated for commercial, office, personal care and improvement services, indoor recreation and entertainment, retail, restaurant, and outdoor greenhouse uses. Much of the site is vacant, and the only existing use is a laundromat. Properties to the east are zoned SF-5 and MH Manufactured Housing and are developed with single-family dwellings and manufactured homes. Development of higher density residential uses at this location can act as a buffer from the permitted commercial development in PUD #32 and the single-family housing to the north.

The Unified Zoning Code does not require screening of TF-3 zoning from any other zoning classification. The Wichita Landscape ordinance does not require any landscaping for developments zoned TF-3. The off-street parking requirement for duplexes is one parking space per dwelling unit.

CASE HISTORY: In 2012, the property was platted at Lot 1, Block A, Dan Schmidt Addition. As previously stated, a replat is required in order to develop the property in the way the applicant desires. In 1991, BZA27-91 was approved reducing the parking requirement for the former plant nursery/ garden center.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residences
SOUTH:	PUD	Commercial Uses
EAST:	SF-5 & MH	Single-family residences and manufactured homes
WEST:	SF-5	Single-family residences

PUBLIC SERVICES: South Hydraulic Avenue is a paved, five lane arterial with sidewalks on both sides. The internal street network will be local street and shall comply to the Subdivision Regulations as determined at the time of platting. Wichita Transit does not have bus stop located near the site. Municipal water and sewer are available to the site.

CONFORMANCE TO PLANS/POLICIES: The request to rezone the property is in conformance with the following adopted plans:

The Community Investments Plan. The Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site “Residential” on the Future Growth Concept Map. Residential uses encompass areas that reflect the full diversity of residential development intensities typically found in a large urban municipality including duplexes. Development of higher density residential uses at this location can act as a buffer from the permitted commercial development in PUD #32 and the single-family housing to the north.

South Wichita/Haysville Area Plan: The site is also located within the boundaries of the South Wichita/Haysville Area Plan, which was adopted in 2002. The plan was conceived as an effort to provide guidance for redevelopment after a tornado went through the area in 1999 in addition to providing guidance for future development in the area. The future growth map of this plan identifies the site as appropriate for Public Park/Open Space/Golf Course. However, the requested rezoning is in alignment with Goal #4 of the plan, which states, “Promote the development and revitalization of the housing and neighborhoods within the planning Area” Objective A of this goal states, “Enhance and improve the area’s housing opportunities to support the growth and development of the area.” The development of duplexes supports providing more housing opportunities in the area.

RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends **APPROVAL** of the zone change request.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Properties north and west are zoned SF-5 Single-Family Residential and are developed with single-family dwellings. Property to the south is zoned PUD Planned Unit Development #32 and is designated for commercial, office, personal care and improvement services, indoor recreation and entertainment, retail, restaurant, and outdoor greenhouse uses. Properties to the east are zoned SF-5 and MH Manufactured Housing and are developed with single-family dwellings and manufactured homes. Development of higher density residential uses at this location can act as a buffer from the permitted commercial development in PUD #32 and the single-family housing to the north.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is presently zoned OW Office Warehouse and is undeveloped. The site could be developed with a wide range of commercial intensities as permitted in OW zoning. However, certain uses in OW zoning could cause negative impacts on surrounding residential properties such as odor, noise, light pollution and negative visual aesthetics.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Down zoning the property to TF-3 Two-Family Residential for the development of duplexes is a more compatible use of the land given the surrounding SF-5 Single-Family Residential zoning. The higher density housing can act as a buffer between the permitted commercial uses in PUD #32 and the single-family housing to the north.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The requested zoning is in conformance with the *Community Investments Plan* and the *South Wichita- Haysville Area Plan* as discussed in the staff report.

5. **Impact of the proposed development on community facilities:** The development of the site will likely cause an increase in traffic on South Hydraulic, but not so significant to have negative impacts on the existing facilities.

PHILIP ZEVENBERGEN, PLANNING STAFF: Presented the staff report. He stated that the District's Advisory Board (DAB) 3 voted to approve, 9-0-1, with one abstention being Commissioner Miles, and there was no public comment.

FOX: The streets are platted at the time of platting, so we don't govern that.

ZEVENBERGEN: Right. The parking standard for duplexes is one per unit, which is an off-street parking requirement, and that can be met inside of a garage, if a garage is present. It can either be counted inside of a garage or driveways off of the streets to the properties – either way, it's one per dwelling so they would be looking at an off-street parking requirement of 16.

FOX: And the streets to nowhere with a hammerhead, you can navigate that to get back around?

ZEVENBERGEN: Likely, at the time of platting, Fire will require some sort of hammerhead for their rigs to be able to turn around should they need to get in there to fight a fire and have to get back out. Again, that was not a plat they were seeing – that was just kind of a schematic to show the general layout of the details about the street layout and easements, and all that stuff will be determined at the time of the replat.

MOTION: To approve subject to staff recommendation.

FOSTER moved, and **MCKAY** seconded the motion, and it carried (10-0).



Interoffice Memorandum

To: MAPC

From: Becca Johnson, District 3 Community Services Representative

Subject: ZON2022-00010

Date: March 2, 2022

.....

On March 2nd, 2022 the District 3 Advisory Board considered a request to change zoning from OW Office Warehouse to TF-3 Two-Family Residential to build duplexes on property located on the west side of South Hydraulic and within one-quarter mile north of East 55th Street South.

The applicant was in attendance.

DAB and members of the public asked and made the following summarized questions and comments:

DAB (Q): There seems to be a lot of rezoning happening nearby. We heard a rezoning case during the January DAB to rezone a small sliver of land a few blocks away to commercial use. How do these cases coincide?

Staff (A): This case is not related to the commercial property extension nearby. Duplexes are trending city-wide, and we are seeing a significant number of rezoning requests for duplexes, more than any other residential zoning request.

DAB (C): It is a good thing that we are developing new properties within city limits that do not stretch city resources like fire and police while also improving tax revenue.

CM Hoheisel (C): Especially housing.

Action Taken: Motion made by **David Kapaun** and seconded by **Michael Loop** to **APPROVE** the zone change request. Motion to **APPROVE PASSED 9-0-1**.

Respectfully submitted,
Becca Johnson, District 3 Community Services Representative

ORDINANCE NO. 51-747

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2022-00010

City zone change from OW Office Warehouse to TF-3 Two-Family Residential zoning on property described as:

Lot 1, Block A, Dan Schmidt Addition, Sedgwick County, Kansas.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ATTEST:

Brandon J. Whipple, Mayor, City of Wichita

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
April 19, 2022

TO: Mayor and City Council

SUBJECT: ZON2022-00013 – City Amendment to Protective Overlay #230 Provision #1 to Allow Vehicle Sales and Service; Generally Located 800 Feet West of South Hillside Avenue and on the North Side of East 31st Street South, 2826 East 31st Street South (District III)

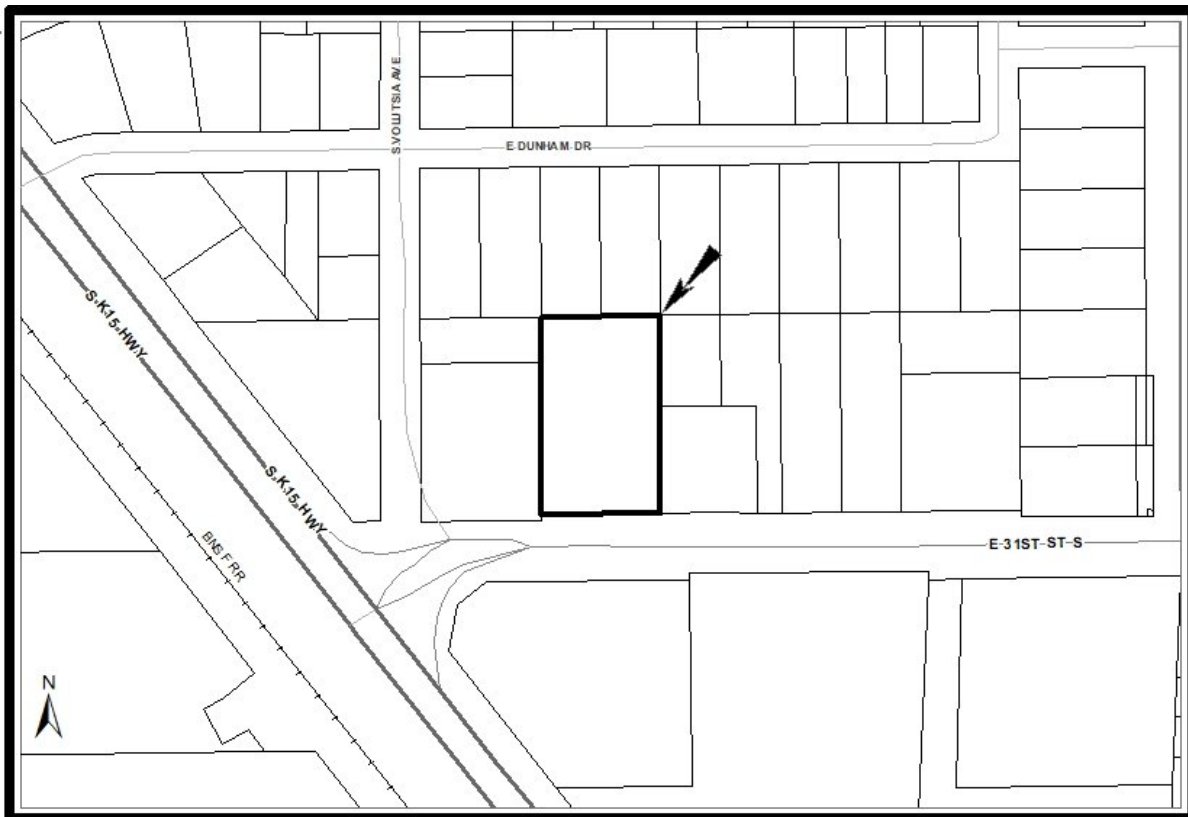
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve (10-0), per staff recommendation.

MAPD Staff Recommendations: Approve subject to amended Protective Overlay #230.

DAB III Recommendations: Approve (10-0), per staff recommendation.



Background: The applicant is requesting an amendment to Provision #1 of Protective Overlay (PO) #230 to allow vehicle and equipment sales on property zoned GC General Commercial. The site is located on the north side of East 31st Street South and east of K-15 Highway (2826 East 31st Street South). The site has historically been used for Vehicle Repair, General in addition to an appliance retail store. Per the Unified Zoning Code (UZC), Vehicle and Equipment Sales is permitted by-right in GC zoning. However, Provision #1 of PO #230 restricts uses on the site to those permitted by-right in LC Limited Commercial in addition to Vehicle Repair, General as permitted in GC.

The applicant states that the primary use of the former vehicle repair shop will change to vehicle sales with incidental service and maintenance. The appliance retail store is under governance of PO #230 and owned by the same owner, but the use is not intended to change with this request. The applicant is not required to submit a site plan with their request, so it is unknown how they intend to use the site for vehicle sales. Staff is recommending that a provision be added to the PO to require a site plan to be reviewed and approved for this use prior to the sale of vehicles commencing.

There are two existing car lots along East 31st Street near this location. One is located approximately 500 feet to the west of the subject site at the northeast corner of East 31st and K-15. The other is located approximately 1,000 feet east of the subject site at the northeast corner of East 31st Street and South Hillside.

Analysis: On March 17, 2022, the Metropolitan Area Planning Commission (MAPC) approved the application (10-0) subject to the recommended amended text to Protective Overlay as attached in the Supporting Documents. No one spoke in opposition at this public hearing.

On March 2, 2022, District Advisory Board (DAB) III reviewed the request and recommended approval (5-4-1) per MAPC recommendation. No members of the public spoke at this public hearing.

No protest petitions were received for the requested zoning change.

The request can be approved with a simple majority vote.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires four of seven votes).

Attachments:

1. Supporting Documents
2. MAPC Minutes
3. DAB III Report
4. Ordinance

Original Protective Overlay #230 Text








1. Permitted uses are those permitted by-right in the LC Limited Commercial (“LC”) zone district plus “vehicle repair, general” as allowed in the GC General Commercial (“GC”) zone district.
2. No off-stie or portable signs shall be permitted
3. All vehicles parked or outside of a building in need of “vehicle repair, general” must be located behind the buildings on the west side of the property and screened from ground view from 31st Street South, and from adjoining and adjacent properties. “Vehicle repair, general” work is only permitted inside an enclosed building. The outside storage of parts is prohibited. Activities deemed by the Unified Zoning Code to be “wrecking or salvage” are not permitted.
4. The site shall be developed in conformance with all applicable regulations.








2036 Wichita Future Growth Concept Map









Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

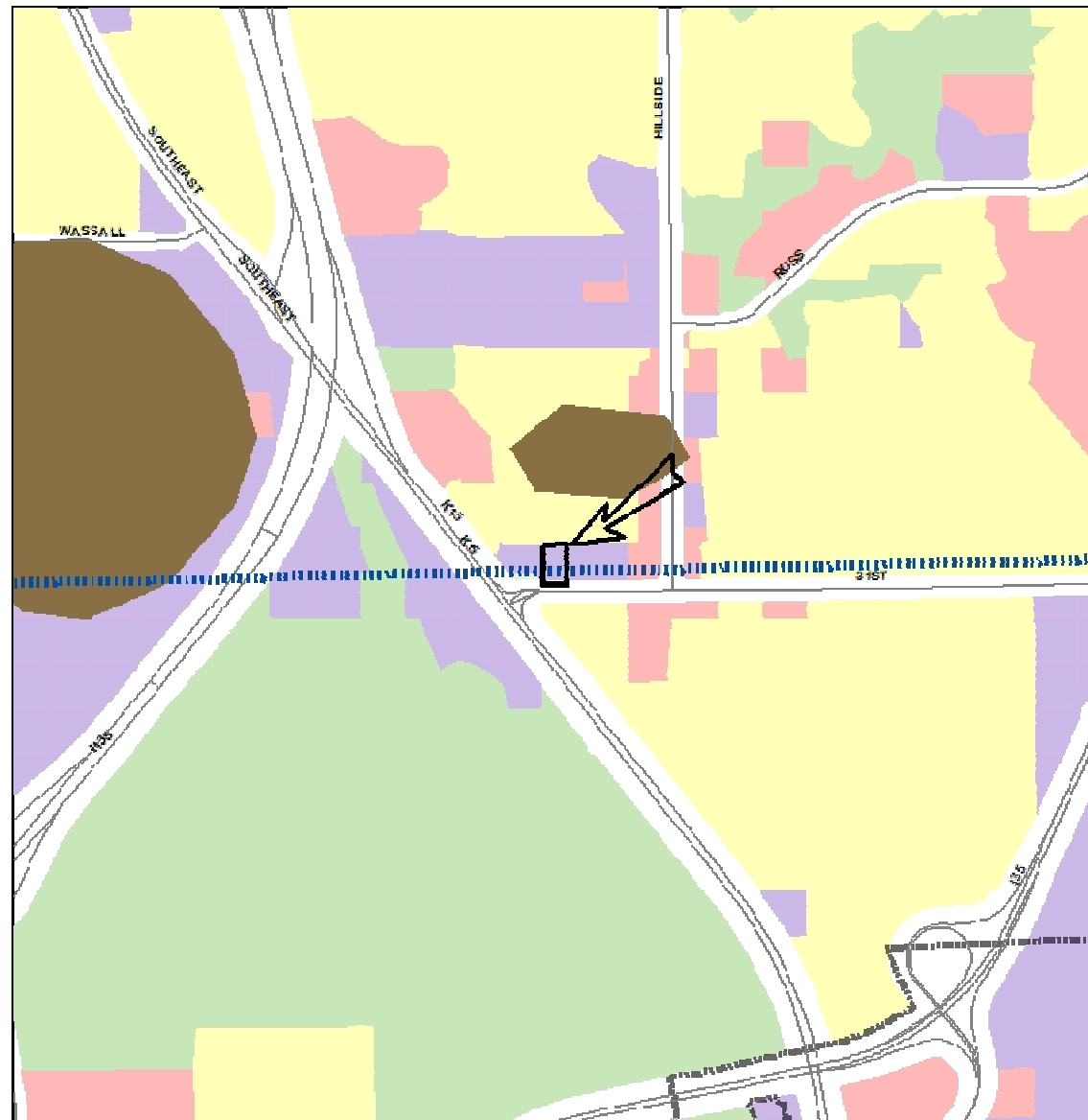
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd_Plan_Areas



Map prepared by the City of Wichita, Kansas, Planning Department, using data provided by the City of Wichita, Kansas, Planning Department, and the City of Wichita, Kansas, Planning Department. The map is for informational purposes only and does not constitute a contract or warranty of any kind. The City of Wichita, Kansas, Planning Department is not responsible for any errors or omissions on this map.



Looking north at site



Looking northwest away from site



Looking northeast way from site



Looking southeast way from site



Looking south away from site



**EXERPT MINUTES FOR MARCH 17, 2022 WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION MEETING**

4.6 ZON2022-00013: City Amendment to P.O. #230 provision #1 to allow vehicle sales and service; generally located 800 feet west of South Hillside on the north side of East 31st Street South (2826 E. 31st Street S).

All of Lots 4 and 5, and that part of Lot 6, Edminster Gardens, Sedgwick County, Kansas, described as beginning at the Northwest corner of said Lot 6, thence South along the West line of said Lot 6, 90.30 feet; thence East with a deflection angle to the left of 90 degrees 18'56", a distance of 1.13 feet; thence Northerly 90.30 feet more or less to the place of beginning.

BACKGROUND: The applicant is requesting an amendment to Provision #1 of Protective Overlay (PO) #230 to allow vehicle and equipment sales on property zoned GC General Commercial. The site is located on the north side of East 31st Street South and east of K-15 Highway (2826 East 31st Street South). The site has historically been used for Vehicle Repair, General in addition to an appliance retail store. Per the Unified Zoning Code (UZC), Vehicle and Equipment Sales is permitted by-right in GC zoning. However, Provision #1 of PO #230 restricts uses on the site to those permitted by-right in LC Limited Commercial in addition to Vehicle Repair, General as permitted in GC.

The applicant states that the primary use of the former vehicle repair shop will change to vehicle sales with incidental service and maintenance. The appliance retail store is under governance of PO #230 and owned by the same owner, but the use is not intended to change with this request. The applicant is not required to submit a site plan with their request, so it is unknown how they intend to use the site for vehicle sales. Staff is recommending that a provision be added to the PO to require a site plan to be reviewed and approved for this use prior to the sale of vehicles commencing.

Properties to the north are zoned SF-5 Single-Family Residential and developed with single-family dwellings. Properties to the east are zoned OW Office Warehouse and LC Limited Commercial and are developed with an event supply rental store, warehouse storage, and a veterinary clinic. Property to the west is zoned GC General Commercial with PO #230 and is developed with an appliance retail store. Farther west is zoned LC Limited Commercial and is undeveloped. Property to the south is zoned LC and is developed with a QuikTrip gas station/convenience store.

There are two existing car lots along East 31st Street near this location. One is located approximately 500 feet to the west of the subject site at the northeast corner of East 31st and K-15. The other is located approximately 1,000 feet east of the subject site at the northeast corner of East 31st Street and South Hillside.

Vehicle and Equipment Sales in GC General Commercial zoning is not subject to any Supplementary Use Regulations. However, since PO #230 restricts the site to LC Limited Commercial for most uses, staff recommends a provision be added to the PO to require adherence to the following Supplementary Use Regulations found in the Unified Zoning Code Article III, Section III-D.6.x:

- (1) Location shall be contiguous to a major Street as designated in the *Transportation Plan* adopted by the Governing Bodies, and as amended from time to time.
- (2) Visual Screening of areas Adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise and to preserve adjacent property values even when

the change in use to Vehicle and Equipment Sales replaces a previous use that is of equal or greater intensity. In no case shall the screening be less than that required by Sec. IV- B.1-3.

(3) All Parking, Outdoor Storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material. Parking barriers shall be installed along all perimeter boundaries Abutting streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public street right-of-way.

(4) The lighting shall be in compliance with the lighting requirements of Sec.IV-B.4. No string-type or search lighting shall be permitted.

(5) The noise levels shall be in compliance with the compatibility noise standards of Sec. IV-C.6. Outdoor speakers and sound amplification systems shall not be permitted.

(6) No repair work shall be conducted on site, except in an enclosed building, and further provided that no body or fender work is done.

(7) Only those signs permitted in the LC District shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.

(8) There shall be no use of elevated platforms for the display of vehicles.

CASE HISTORY: The entire property under the governance of PO #230 was platted in 1951 as part of the Edminster Gardens Addition. In 2009, the property was rezoned from LC Limited Commercial to GC General Commercial and PO #230 was established.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residences
SOUTH:	LC	Gas station/ convenience store
EAST:	LC & OW	Supply rental, warehousing, veterinary clinic
WEST:	LC	Undeveloped

PUBLIC SERVICES: East 31st Street South is a paved, five-lane arterial with sidewalks on both sides. Within 500 feet to the west is the intersection with K-15 Highway. This intersection is signalized and has been improved with turn lanes. Wichita Transit does not provide bus service in the area. The site is currently served by municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The proposed amendment to Protective Overlay #230 is in conformance with the following plans.

The Community Investments Plan: The requested Conditional Use is in conformance with the Future Growth Concept Map of the Community Investment Plan. The Community Investments Plan (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area in which the site is located to be appropriate for “Industrial” uses. Vehicle and Equipment Sales is a permitted use with GC General Commercial zoning as permitted by the revised PO #230.

Wichita: Places for People Plan: The requested amendment to Protective Overlay #230 is in conformance with the goals of the Wichita: Places for People Plan. The Wichita: Places for People Plan provides recommendations for urban infill development in the Established Central Area (ECA). The subject site is located within the ECA. In general, the ECA is envisioned as “a place for people - a place that provides for the movement of people - on foot, on bike and through transit - in balance with automobiles.”

- Strategies: The Plan recommends strategies to help guide the community in their actions to create walkable places within Wichita. The requested zoning aligns with Strategy 6, “Encourage infill and redevelopment that is contextual to the environment in which it is occurring.” The proposed car lot is not a new use in the immediate area and contextually aligns with existing uses in the area.
- Current Condition: The subject property is located within an area identified as an “area of opportunity.” The Places for People Plan defines Areas of Opportunity as those “areas that generally exhibit economic challenges, a disconnected development pattern, and a lack of walkable places and facilities. These areas are in need of strategic reinvestment, both public and private, to assist in redefining and reinvigorating the area, physically and socially.” The amendment to the Protective Overlay would expand the opportunity for private investment in the area.

RECOMMENDATION: Based upon information available prior to the public hearings and evaluating the conditions and uses of the surrounding neighborhood, staff is recommending the request be **APPROVED, subject the revised language of Protective Overlay #230.**

Recommended Protective Overlay #230 Text

1. Permitted uses are those permitted by-right in the LC Limited Commercial (“LC”) zone district plus “vehicle repair, general” and “vehicle and equipment sales” as allowed in the GC General Commercial (“GC”) zone district.
2. No off-stie or portable signs shall be permitted.
3. All vehicles parked or outside of a building in need of “vehicle repair, general” must be located behind the buildings on the west side of the property and screened from ground view from 31st Street South, and from adjoining and adjacent properties. “Vehicle repair, general” work is only permitted inside an enclosed building. The outside storage of parts is prohibited. Activities deemed by the Unified Zoning Code to be “wrecking or salvage” are not permitted.
4. “Vehicle and Equipment Sales” use shall conform to the following Supplementary Use Regulations of the Unified Zoning Code Section III-D.6.x:
 - a. Location shall be contiguous to a major Street as designated in the *Transportation Plan* adopted by the Governing Bodies, and as amended from time to time.
 - b. Visual Screening of areas Adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise and to preserve adjacent property values even when the change in use to Vehicle and Equipment Sales replaces a previous use that is of equal or greater intensity. In no case shall the

- screening be less than that required by Sec. IV- B.1-3.
- c. All Parking, Outdoor Storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material. Parking barriers shall be installed along all perimeter boundaries Abutting streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public street right-of-way.
 - d. The lighting shall be in compliance with the lighting requirements of Sec.IV-B.4. No string-type or search lighting shall be permitted.
 - e. The noise levels shall be in compliance with the compatibility noise standards of Sec. IV-C.6. Outdoor speakers and sound amplification systems shall not be permitted.
 - f. No repair work shall be conducted on site, except in an enclosed building, and further provided that no body or fender work is done.
 - g. Only those signs permitted in the LC District shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.
 - h. There shall be no use of elevated platforms for the display of vehicles.
- 5 For Vehicle and Equipment Sale, the applicant shall submit a scaled site plan for review and approval by the Planning Department and all improvements to the property shall be finished prior to the selling of any vehicles or equipment. The site plan will include, but not be limited to, internal circulation that will remain open during hours of operation to allow access, area designated for display of cars, customer and employee parking, any existing or proposed signs, existing or proposed lighting, and the location of parking barriers. The site will be developed according to the revised site plan.
 - 6 The site shall be developed in conformance with all applicable regulations.

This recommendation of approval is based on the following findings:

1. **The zoning, uses and character of the neighborhood.** Properties to the north are zoned SF-5 Single-Family Residential and developed with single-family dwellings. Properties to the east are zoned OW Office Warehouse and LC Limited Commercial and are developed with an event supply rental store, warehouse storage, and a veterinary clinic. Property to the west is zoned GC General Commercial with PO #230 and is developed with an applicant retail store. Farther west is zoned LC Limited Commercial and is undeveloped. Property to the south is zoned LC and is developed with a QuikTrip gas station/convenience store.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is zoned GC General Commercial with PO #230 but it is limited to uses permitted in LC Limited Commercial in addition to Vehicle Repair, General. The site was formerly a vehicle repair shop. The applicant intends to provide limited maintenance and service alongside the vehicle sales business.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Vehicle sales on a site this size when developed will not introduce a new use along the arterial corridor at this location. The intensity of use will likely not cause any new possible negative impacts to surrounding properties than what is already presenting with existing uses nearby.
4. **Conformance of the requested change to adopted or recognized Plans/Policies:** The proposed

Conditional Use is in conformance with the *Community Investments Plan* and the *Wichita Places for People Plan* as discussed in the staff report.

5. **Impact of the proposed development on community facilities:** Development of the property would make use of existing community facilities and resources and is not expected to exceed their capacity. All public services are available to be extended to serve the property.

PHILIP ZEVENBERGEN, PLANNING STAFF: Presented the staff report. He stated this case went before the District's Advisory Board (DAB) 3 on March 2nd and they voted to approve it, 5-4-1, with the abstention being Commissioner Miles, and there was no public comment. One of the gentleman who made the motion for approval says that as far as he can remember this corner has been related to auto sales or auto repair, which in his mind fit contextual for this area.

STEPHAN HECOX, 2822 E 31ST ST S, WICHITA, APPLICANT: I am the owner of the property and I have had ownership of the property for 10 years. In the past, we have leased the space that Habib would like to sell cars at to repair shops. In comparison to what Habib offers being a car dealer to repair shops in the past, is that he will display cars that have been refurbished and placed up for sale, not full of junk cars, which were an eyesore to anybody in the area. I would like Habib to be allowed to do this as it's my opinion that it will improve the appearance of the whole area.

HABIB NASIRI, 847 S EDMOOR, WICHITA, APPLICANT: Niece Margarita spoke for Habib due to language barrier. He has had businesses prior to this. but this time he's serious about expanding and getting this done right. We have come across this issue fairly recently. At first, we were told by the zoning department that we were good to go and start selling cars. We were then contacted by zoning enforcement and told weren't allowed to proceed unless we have the protective overlay amended, and that's why we are here. We don't see anybody protesting or any kind of issues that would cause us not to be able to get this done.

FOX: Do you agree with the staff comments that were presented for the things you'd have to comply with such as lighting, signage, etc.?

MARGARITA: Correct, I don't see this being a problem.

SHALA PEREZ, COMMUNITY ADVOCATE: I've known this family for about 15 years. Habib reached out to me to help him. Habib did have a shop around the corner, which is on the map – the one closer to K-15, at the intersection. Habib wanted to have his own place so that's why he relocated around the corner. I did call on his behalf and spoke with zoning to make sure everything was okay and they didn't realize there was that protective overlay. Habib has invested quite a bit of money to get started, and then when he went to apply for his dealership license, he found out about the protective overlay. Habib has been trying to work with everybody to make sure this gets handled correctly. I know him, and I will do my best to help him and make sure that he conforms to all your requirements and gets everything done.

MOTION: To approve subject to staff comments.

WARREN moved, **MCKAY** seconded the motion, and it carried (10-0).



Interoffice Memorandum

To: MAPC

From: Becca Johnson, District 3 Community Services Representative

Subject: ZON2022-00013

Date: March 2, 2022

.....

On March 2nd, 2022 the District 3 Advisory Board considered a request for a City Amendment to P.O. #230 provision #1 to allow vehicle sales and service; generally located 800 feet west of South Hillside on the north side of East 31st Street South (2826 E. 31st Street S).

The agent and the applicant were not in attendance.

DAB and members of the public asked and made the following summarized questions and comments:

DAB (C): Hillside and 31st has been home to vehicle repair and sales businesses for many years, so this seems to be within the normal usage of the area.

Action Taken: Motion made by **David Kapaun** and seconded by **Michael Loop** to **APPROVE** the application subject to the revised language of Protective Overlay #230. Motion to **APPROVE PASSED 5-4-1**.

Respectfully submitted,
Becca Johnson, District 3 Community Services Representative

ORDINANCE NO. 51-749

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2022-00013

Amendment to Protective Overlay #230 on property zoned GC General Commercial, described as:

All of Lots 4 and 5, and that part of Lot 6, Edminster Gardens, Sedgwick County, Kansas, described as beginning at the Northwest corner of said Lot 6, thence South along the West line of said Lot 6, 90.30 feet; thence East with a deflection angle to the left of 90 degrees 18'56", a distance of 1.13 feet; thence Northerly 90.30 feet more or less to the place of beginning.

Protective Overlay #230 shall hereby read as follows:

1. Permitted uses are those permitted by-right in the LC Limited Commercial ("LC") zone district plus "vehicle repair, general" and "vehicle and equipment sales" as allowed in the GC General Commercial ("GC") zone district.
2. No off-site or portable signs shall be permitted.
3. All vehicles parked or outside of a building in need of "vehicle repair, general" must be located behind the buildings on the west side of the property and screened from ground view from 31st Street South, and from adjoining and adjacent properties. "Vehicle repair, general" work is only permitted inside an enclosed building. The outside storage of parts is prohibited. Activities deemed by the Unified Zoning Code to be "wrecking or salvage" are not permitted.
4. "Vehicle and Equipment Sales" use shall conform to the following Supplementary Use Regulations of the Unified Zoning Code Section III-D.6.x:
 - a. Location shall be contiguous to a major Street as designated in the *Transportation Plan* adopted by the Governing Bodies, and as amended from time to time.
 - b. Visual Screening of areas Adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise and to preserve adjacent property values even when the change in use to Vehicle and Equipment Sales replaces a previous use that is of equal or greater intensity. In no case shall the screening be less than that required by Sec. IV- B.1-3.
 - c. All Parking, Outdoor Storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material. Parking barriers shall be installed along all perimeter boundaries abutting streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public street right-of-way.

- d. The lighting shall be in compliance with the lighting requirements of Sec.IV-B.4. No string-type or search lighting shall be permitted.
 - e. The noise levels shall be in compliance with the compatibility noise standards of Sec. IV-C.6. Outdoor speakers and sound amplification systems shall not be permitted.
 - f. No repair work shall be conducted on site, except in an enclosed building, and further provided that no body or fender work is done.
 - g. Only those signs permitted in the LC District shall be permitted on this site, except that no portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.
 - h. There shall be no use of elevated platforms for the display of vehicles.
5. For Vehicle and Equipment Sale, the applicant shall submit a scaled site plan for review and approval by the Planning Department and all improvements to the property shall be finished prior to the selling of any vehicles or equipment. The site plan will include, but not be limited to, internal circulation that will remain open during hours of operation to allow access, area designated for display of cars, customer and employee parking, any existing or proposed signs, existing or proposed lighting, and the location of parking barriers. The site will be developed according to the revised site plan.
6. The site shall be developed in conformance with all applicable regulations.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ATTEST:

Brandon J. Whipple, Mayor, City of Wichita

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law